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**Declaration of Master Covenants, Conditions  
and Restrictions  
For  
Moonlight Basin Community  
Madison County, Montana**

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**Declaration of Master Covenants, Conditions and Restrictions  
for  
Moonlight Basin Community, Madison County, Montana**

This Declaration of Master Covenants, Conditions and Restrictions for Moonlight Basin Community (“**Master Declaration**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by MB MT Acquisition LLC, a Delaware limited liability company] (the “**Declarant**”). All capitalized terms used herein are defined in **Article 2** below.

**Article 1  
Declaration – Purposes**

**1.1 General Purposes.**

(a) Declarant owns the real property located in Madison County, Montana hereinafter defined and referred to as the Property and intends to develop said Property as an integrated community.

(b) The Property is part of a larger development known as the Moonlight Basin Community. The Moonlight Basin Community is a master planned community which may include approximately 1,651 potential residential units (as such term is described in the Overall Development Plan) on approximately 8,000 acres of land, as well as ski area, golf and other recreational facilities. As of the recording of this Master Declaration, there are currently approximately 348 existing, improved Sites that would be deemed potential residential units. The Property is a portion of the Moonlight Basin Community. Due to its magnitude, the process of development of the Moonlight Basin Community reasonably could be expected to continue for many years.

(c) Moonlight Basin Community Association, a Montana nonprofit corporation (the “**Association**”), will be formed to hold, manage, and maintain certain property for the common benefit of some or all of the Members, Business Lessees, Licensees, Invitees and members of the general public within the Property; to administer and enforce the covenants, conditions, restrictions, reservations and easements created hereby; to collect and enforce the Assessments, charges, and liens imposed pursuant hereto; and for all other purposes set forth in this Master Declaration, the Articles and Bylaws and the other Governing Documents. This Master Declaration defines certain rights and obligations of Members, Business Lessees, Licensees, Invitees and members of the general public within the Property with respect to the Association and with respect to the Functions undertaken and the Facilities held or maintained by the Association.

(d) By this Master Declaration, Declarant intends to establish a means to provide for and maintain areas within the Property as a pleasant and desirable environment for all Persons residing, visiting or doing business therein. The Moonlight Basin Community is in a unique mountain setting which has a high natural, scenic, recreational, economic and wildlife



value. This Master Declaration is adopted to preserve and maintain the foregoing values of the Property for the benefit of all Persons residing, visiting or doing business therein.

(e) The Property may include areas for which further subdivisions may be platted or which may exist as part of Existing Developments. Declarant reserves the right to develop the Property and the remainder of the Moonlight Basin Community in accordance with the Overall Development Plan or as otherwise permitted under law and subject to any annexation or withdrawal of real property as permitted herein, regardless of whether said property was originally subject to or ever becomes subject to the Overall Development Plan or the Property.

1.2 **Declaration.** To further the general purposes herein expressed, Declarant, with respect to the property described in **Exhibit A** attached hereto and incorporated herein by reference, for itself, its successors and assigns, hereby declares that the property described in **Exhibit A** attached hereto and any property subsequently added, annexed or subjected to this Master Declaration (collectively, the “**Property**”) or to which this Master Declaration relates, shall, at all times, be owned, held, used, occupied, sold and conveyed subject to the provisions of this Master Declaration and to the covenants, conditions, restrictions, reservations, easements, Assessments, equitable servitudes, charges and liens herein contained which shall run with and touch and concern the Property and burden and benefit all portions of the Property, the Declarant, the Association, and all other parties having any right, title or interest in the Property or any portion thereof, and their respective heirs, devisees, personal representatives, successors and assigns and any occupants and users of the Property. In addition to the foregoing, other specific covenants, conditions, restrictions, reservations and easements exist herein, burdening and benefiting the Property and certain other real property and Persons, all as expressly set forth below. Each Member, Business Lessee, Licensee, Invitee or other Person who obtains any interest in the Property or uses the Property, by accepting or using such interest or using the Property agrees to abide by the provisions of the Governing Documents and to cooperate with the Association and the Declarant in their efforts to enforce such provisions.

## **Article 2**

### **Definitions**

The words and terms used herein shall be deemed to have the definitions and meanings as defined herein.

2.1 **Act.** Act means the Montana Nonprofit Corporation Act, §35-2-113 *et seq.*, MCA, as amended.

2.2 **Affirmative Vote of a Majority of the Classes.** The Affirmative Vote of a Majority of the Classes means and shall be achieved on any particular matter if (and only if) all of the following: (a) the Class B Member votes in favor of such matter, (b) the affirmative vote of a majority of the other Classes of Members which have Members entitled to vote on such matters (other than Class B), voting as Classes, vote in favor of such matter. For the purpose of determining the vote of a Class under **clause (b)** the Class must first achieve Class quorum, as defined in the Bylaws, and then the total votes of a majority of the Members of such Class

present at such meeting in person or by Written Ballot and entitled to vote on such matter shall be deemed the vote of such Class. Notwithstanding the foregoing, upon the effective resignation of the Class B Member, the favorable vote of the Class B Member shall no longer be required under **clause (a)** above.

**2.3 Annexable Area.** Annexable Area means the Existing Developments and the undeveloped portions of the Moonlight Basin Community that are described on **Exhibit G**. Unless and until such Annexable Areas are included as part of the Property pursuant to the terms in **Article 13** in a writing recorded in the Public Record, the Annexable Area is not deemed to be part of the Property.

**2.4 Annual Business License.** Annual Business License means the annual license required to be obtained from the Declarant (or the Association, to the extent the Declarant has assigned such function pursuant to **Section 6.10** to the Association) for all Businesses that operate within the Property.

**2.5 Antenna.** Antenna means any cell tower, television or radio antenna, "C.B." antenna, satellite dish, over the air reception device, microwave transmitting or receiving antenna, or other antenna, transmitting or receiving device or communications structure or equipment of any type.

**2.6 Articles of Incorporation or Articles.** Articles of Incorporation or Articles means the Articles of Incorporation of the Association as filed with the Montana Secretary of State and any amendments and restatements thereto as from time to time.

**2.7 Assessments.** Assessments mean, collectively, the categories of assessments as established herein and in **Exhibit E** attached hereto, being Common Assessments, Community Transfer Assessments, , Default Assessments, Special Assessments, and Special Benefits Area Assessments (each as defined in **Exhibit E**), or any other assessments as may be established by the Board, with the Affirmative Vote of a Majority of the Classes.

**2.8 Association.** Association means the Moonlight Basin Community Association, a Montana nonprofit corporation operating pursuant to the Act, or its successors or assigns.

**2.9 Association Expenses.** Association Expenses means allocations to reserves for and all costs, expenses and liabilities incurred by or on behalf of the Association, including, but not limited to, costs, expenses and liabilities for **(a)** acquiring, leasing, renting, designing, constructing, managing, operating, maintaining, repairing, replacing and improving Facilities; **(b)** administering and enforcing the covenants, conditions, restrictions, reservations and easements created by this Master Declaration, and Governing Documents; **(c)** levying, collecting and enforcing the Assessments, charges and liens, imposed pursuant to this Master Declaration and Governing Documents; **(d)** regulating and managing the Property; **(e)** performing any and all Functions permitted by this Master Declaration or any Governing Document; **(f)** operating the Association; and **(g)** any other cost or expense legally incurred by the Association.

**2.10 Bed and Breakfast.** Bed and Breakfast means an operation involving the letting of one or more rooms in a residence to an unrelated party or parties where the Owner **(a)** is also residing, and **(b)** provides guests with breakfast (but no other meals) as part of the lodging accommodations and without additional charge.

**2.11 Board of Directors or Board.** Board of Directors or Board means the body responsible for administration of the Association, selected as provided in the Bylaws.

**2.12 Building Envelope.** Building Envelope means the area that may be shown within each Site on a Plat recorded in the Public Record or on a building envelope plan on file with Madison County, Montana or with the Association that specifies the boundaries within which improvements may be constructed.

**2.13 Business.** Business means any commercial, retail or service enterprise, including, without limitation, restaurants, shops, offices offering medical, legal, accounting, engineering, real estate, property management or repair services and facilities providing the point of sale for recreational services such as horseback riding, skiing and snowboarding, ski school instruction, guiding, golfing or other seasonal recreational activities; any Lodge; and, without deeming such uses permitted hereunder, any manufacturing, industrial, warehouse, logistics, storage, or other non-residential use of property; but shall exclude **(a)** home occupations and Bed and Breakfasts as permitted under **Section 7.2** and **(b)** any leases for Antennas and other similar uses as determined by the Association and otherwise permitted hereunder.

**2.14 Business Class.** A membership class that may be added pursuant to **Section \_\_\_\_\_**. This class of members shall be all those Owners where any type of Business (including a Lodge), except Bed and Breakfast or home occupation as permitted under **Section 7.2**, is operated upon their Sites, and Owners of Sites that do not constitute Class A Members.<sup>1</sup> A Business or other operation that occupies less than 500 square feet, shall be only entitled to one vote. Notwithstanding the foregoing, an Antenna, or a Site that merely constitutes a parking space, shall not be deemed to be a Business Class Member for the purpose of voting rights in relation to the Association, though such parcels shall still be subject to the Assessments and the other obligations imposed on Members hereunder. A Business Class Member shall be entitled to one vote for every 500 square feet of enclosed, useable space that is owned by such Member and used in furtherance of the operation of such Business, but such calculation of voting shall exclude Sites which contain or are comprised of only meeting facilities, restrooms, lobbies, foyers or facilities which Invitees do not directly use such as closets and employee locker rooms. Each Class B Member shall receive a minimum of one vote but shall receive no fractional vote for any retail or service area less than 500 square feet. The Association shall have the discretion to exclude from voting any Person who attempts to own or lease property that does not otherwise cause a person to be a Member under the other Classes, where such ownership or lease is predominantly in order to obtain a Business Class Membership.

2.15 **Business Lessee.** Business Lessee means the Person, who is the lessee under a lease or ground lease for a Business of any part or all of a Site or the lessees of any space within a building on any Site for use as a Business; provided, however, that the term Business Lessee shall not include tourists or short term guests, lessees for residential purposes or Persons who use a Residential Site for both their own residential and Business purposes. The term Business Lessee shall include Declarant to the extent it is a Business Lessee as defined above, but it shall not include the Association

2.16 **Business Leased Premises.** Business Leased Premises means property leased by a Business Lessee.

2.17 **Bylaws.** Bylaws means the Bylaws of the Association adopted by the Association and any amendments and restatements thereto as from time to time.

2.18 **Certificate of Survey.** Certificate of Survey means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations that creates a parcel pursuant to the requirements of the Montana Subdivision and Platting Act and Madison County.

2.19 **Change in Control Date.** Change in Control Date means the date upon which Declarant control terminates which shall be the later of (a) **[DATE CERTAIN—25 year maximum term from recording]**, or (b) sixty (60) days after conveyance of ninety (90%) percent of the maximum number of residential units permitted by the Overall Development Plan to a Person other than Declarant. As of the date of this Master Declaration, 1,651 proposed residential units are permitted under the current Overall Development Plan, though that number may be amended and increased pursuant to any amendment to the Overall Development Plan as is permitted hereunder, and such amended or increased amount shall be used in the calculation of the Change in Control Date.

2.20 **Class or Classes.** Class or Classes means the various voting classes as set forth in **Exhibit C** attached hereto and incorporated herein by reference.

2.21 **Condominium Declarations.** Condominium Declaration means a declaration that is subject to the terms of this Master Declaration and which subjects a portion of the Property to the Unit Ownership Act. This Master Declaration is not a “declaration” as defined in the Unit Ownership Act in that this Master Declaration does not, and shall not be deemed to, submit any property to the provisions of the Unit Ownership Act. UOA Sites shall only be subjected to the Unit Ownership Act pursuant to a separate Condominium Declaration. This Master Declaration is a set of covenants, conditions and restrictions that run with the land that binds both UOA Sites subject to the Unit Ownership Act and real property and Sites that have not been and will not be subjected to the Unit Ownership Act.

2.22 **Construction Activity.** Construction Activity means any site preparation, landscaping, sign erection, construction, reconstruction, change, modification, alteration, enlargement or material maintenance of any Improvements or real property, or any physical

changes in the use of any Site or other property or building or structure thereon, interior or exterior.<sup>2</sup>

**2.23 Declarant.** Declarant means MB MT Acquisition LLC and any Person that is designated by a written instrument as a successor or assignee of Declarant under this Master Declaration recorded in the Public Record, or who succeeds as Declarant pursuant to the terms of **Article 6**.

**2.24 Declarant Control Period.** Declarant Control Period means the period commencing on the date on which Declarant forms the Association and ending on the Change in Control Date.

**2.25 Declarant Special Member.** Declarant Special Member means the Declarant during the Declarant Control Period, as assigned pursuant to the assignment provisions of **Section 2.23**.

**2.26 Design Guidelines.** Design Guidelines mean any instruments adopted by the DRB or the DRB has accepted jurisdiction over for the regulation and management of the Property or any portion thereof with respect to any matter that the DRB is authorized to review or for which the DRB is authorized to establish standards, as the same may be amended from time to time.

**2.27 Direct Benefit.** Direct Benefit means that the proceeds of the Community Transfer Assessment (as defined in **Exhibit E**) are used exclusively to support maintenance and improvements to the Property, and acquisition, improvement, administration, and maintenance of Facilities owned by the Association and used primarily for the benefit of Members of the Association. Direct Benefit also includes cultural, educational, charitable, recreational, environmental, conservation or other similar activities that (a) are conducted in or protect the Property or adjacent or contiguous property, or (b) are conducted on other property that is used primarily by residents of the Property. To the extent that the provisions of 12 CFR Part 1228 as to the use of private transfer fees are amended to remove or expand the Direct Benefit requirement so that it is less restrictive, then the provisions of this Master Declaration may be similarly deemed to remove or expand the Direct Benefit requirement so that it is less restrictive, such interpretation to be at the discretion and election of the Association.

**2.28 DRB.** DRB means the Design Review Board as established pursuant to **Article 8**.

**2.29 Enumerated Transportation Systems.** Enumerated Transportation Systems means streets, access roads, mountain and other limited access roads, paths, walkways, walks, driveways and other drives, ski trails, skier bridges, skier tunnels, skiways, sidewalks, trails, skiway supports, ski lifts, snow cats and snowmobiles, gondola, tram, bus, automobile, funicular or rail systems, stations, stops and other related structures, any facilities necessary or useful for transit purpose or other means of transportation to and from or within the Moonlight Basin

Community, and lighting, signage and any other facilities deemed necessary or appropriate for the proper operation and maintenance of such systems.

**2.30 Existing Association.** Existing Association means an association of property owners or, under the Unit Ownership Act, condominium or townhouse owners, for an Existing Development that is within the Moonlight Basin Community that is not part of the Property at the time of the recording of this Master Declaration, but which may be annexed to the Property and made subject to this Master Declaration at a later time pursuant to the terms of this Master Declaration.

**2.31 Existing Developments.** Existing Developments means the property described in the Plats or Certificates of Survey that are adjacent or near the Property, which were originally platted by Moonlight Basin Ranch, L.P., Moonlight Basin Ranch Limited Partnership, or Moonlight Basin Ranch, Inc., but are not part of the Property, and which exist as of the date of this Master Declaration. Declarant and Association acknowledge that the predecessor to Declarant developed and sold these Existing Developments, which are part of the Moonlight Basin Community, and adjacent to, or near the Property prior to the recording of this Master Declaration.

**2.32 Facility.** Facility means any real estate or Improvement within the Moonlight Basin Community **(a)** that is owned by the Association, **(b)** that is owned by a Person other than the Association, but in which the Association has rights of use or possession pursuant to a lease, license, easement or other agreement, or **(c)** that is part of the Property designated by Declarant as a Facility or indication of similar use restriction herein or on a Plat, for the use or benefit of one or more Member, Licensee, Business Licensee, Invitee or member of the general public.

**2.33 Federal Mortgage Underwriter.** Federal Mortgage Underwriter means governmental (including, but not limited to, a governmental sponsored enterprise) or nation-wide institutional lender or purchaser of mortgage loans or governmental or provider of credit support for mortgage loans or securitized mortgage loans, including, but not limited to, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the United States Veterans Administration and their respective successors and assigns.

**2.34 Function.** Function means any activity, function or service listed in this Master Declaration which is required to be or may be undertaken or performed by the Association as well as any activity, function or service otherwise undertaken or performed by the Association.

**2.35 Golf Course Property.** Golf Course Property means the property within the Moonlight Basin Community owned and operated for a golf course and for commercial, recreational and/or social purposes, including, but not limited to the Golf Course Property that is legally described on **Exhibit D** attached hereto and incorporated herein by reference and as may be amended from time to time. This property may include, without limitation, whether now or hereafter existing, the golf course, driving range, chipping and putting areas, clubhouse (inclusive of bar and restaurant facilities), maintenance shop and associated structures, ski

facilities, and related commercial, recreational and social facilities. As of the date of the recording Master Declaration, the Golf Course Property is not part of the Property, is not a Site, and the owner or the Golf Course Property is not an Owner or Member hereunder. At any time during the Declarant Control Period, the Declarant may amend, at its sole discretion, from time to time, **Exhibit D** and the description set forth in this Section of the Golf Course Property to more accurately describe the Golf Course Property, and the consent of no other party shall be required

**2.36 Good Standing.** Good Standing means that a Member is current on the payment of their Assessments, is not deemed by the Board to be in violation of the Governing Documents, and is current on any other payments deemed due and owing to the Association or a Sub-association.

**2.37 Governing Documents.** Governing Documents collectively means this Master Declaration, Bylaws, Articles, Rules and Regulations, Design Guidelines, and resolutions of the Board, all as amended from time to time.

**2.38 Hazard Area.** Hazard Area means Resort Areas, a National Forest, forests, wildlife habitat, steep slopes, lakes and wildlife conservation areas.

**2.39 Improvements.** Improvements means all structures and appurtenances thereto of every type and kind, including but not limited to, buildings, outbuildings, all exterior surfaces including the surface finish thereof; Enumerated Transportation Systems; snowmaking facilities; night skiing facilities and illumination equipment for trails, bridges and other amenities that are part of the Property; security systems; mailbox structures; decks; canopies; patios; awnings; gardens; sprinkler systems and other landscaping; planting, clearing, or removing of trees, shrubs, grass, or plants and appurtenances; ponds and water tanks; drainage, detention, retention facilities and culverts; monuments; entertainment and recreational areas, amenities and facilities; swimming pools; ice rinks; skating ponds; saunas; steam baths; clubhouses; facilities to accommodate Invitees and visitors; central waste collection and disposal facilities; paving and parking areas; malls; ducts; shafts and flues; conduit installation areas; storage facilities for supplies and equipment; fences; gates; fire breaks and fire prevention works; screening walls; earth walls, retaining walls, cuts and fills associated with any improvements; lighting; signage; pipelines, lift stations, pumps; utilities of any sort; Antennae; communication facilities and lines; management offices; environmental monitoring equipment and facilities; ground water facilities; waterways; the demolition or destruction by voluntary action of any structure or appurtenance thereto of every type and kind; grading, excavation, filling, or similar disturbance to the surface of the land including, but not limited to, change of grade, change of ground level, change of drainage pattern, change of stream bed or change of any existing surface contour; equipment related to the foregoing; and all types of structures, facilities and improvements that a governmental or quasi-governmental entity may be empowered by law from time to time to construct.

**2.40 Internal Revenue Code.** Internal Revenue Code means the Internal Revenue Code of 1986, as amended, and the corresponding provisions of any subsequent federal tax laws.



**2.41 Interval Owner.** Interval Owner means the record holder of legal title to the fee simple interest in a Site or the holder of a use right in a timeshare club, group or program subject to an Interval Ownership Plan, or interest therein, but excluding (a) contract purchasers or holder only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, (b) the Association, (c) any Owner and (d) those having an interest merely as security for the performance of an obligation, unless and until a foreclosure or other effective transfer has been completed and all redemption periods have expired. The term Interval Owner shall include Declarant to the extent it is an Interval Owner or the record owner of fee simple title to a Site subject to an Interval Ownership Plan.

**2.42 Interval Ownership Plan.** Interval Ownership Plan means a plan which subjects real property to uses or programs of ownership or use for the operation of a timesharing, fractional ownership, fraction-sharing, or similar program (a) where the right to exclusive use of a Site (or any other Improvement) rotates among participants in the program on a fixed or floating time schedule over a period of months or years; (b) for the operation of a reservation or time-use system among co-owners of a Site managed by a party other than the co-owners themselves; or (c) for the operation of a reservation or time-use system among co-owners whereby co-owners are required as a condition of purchase of a fractional interest in the Site to subject the fractional interest to a pre-determined reservation or time-use system among co-owners, regardless of whether or not the co-owner may later opt out of such system and regardless of whether the reservation or time-use system is recorded or unrecorded, fixed or floating.

**2.43 Invitee.** Invitee means any family member, customer, agent, employee, independent contractor, guest or invitee of a Member.

**2.44 Licensee.** Licensee means any Person who occupies or uses a Site or portion thereof pursuant to a lease, license, occupancy agreement, concession agreement or under color of any other arrangement with an Owner other than a lease to a Business Lessee.

**2.45 Lodge.** Lodge means a building (or portion of a building) containing lodging facilities that are predominately intended or used for the overnight accommodation of tourists, short term guests, long-term occupancy or permanent guests for compensation, but a Lodge shall not include the portions of any such building that are used for Residential Sites, Sites subject to an Interval Ownership Plan, or Sites used for the operation of a Business. The term Lodge shall include, but is not limited to, motels, hotels and similar structures; but shall not include a Bed and Breakfast.

**2.46 Lodging Room.** Lodging Room means each room or suite intended for separate occupancy in a Lodge.

**2.47 Master Declaration.** Master Declaration shall mean this instrument and all amendments, restatements or supplements thereto hereafter recorded in the Public Record.



2.48 **MCA.** MCA means the Montana Codes Annotated 2013 and any subsequent amendments.

2.49 **Member.** Member means a Person holding a membership in the Association pursuant to **Article 4** of this Master Declaration.

2.50 **Membership.** Membership means a membership in the Association that is appurtenant to the ownership of a Site, including a Site subject to an Interval Ownership Plan, that is held by the Declarant Special Member.

2.51 **Moonlight Alpenglow.** Moonlight Alpenglow means Moonlight Alpenglow, Inc., a Montana nonprofit corporation, which holds certain rights and performs certain obligations in relation to certain Existing Developments.

2.52 **Moonlight Basin Community.** Moonlight Basin Community means the Property, the Mountain Facility, any Golf Course Property, the Existing Developments, the Annexable Area, and any other property developed in the surrounding area by Moonlight Basin Ranch, L.P., Moonlight Basin Ranch, Limited Partnership or Declarant.

2.53 **Mountain Facility.** Mountain Facility means the Moonlight Basin Ski Area (or by whatever name it may from time to time be known) located on land owned by MB MT Acquisition LLC as shown and as legally described on **Exhibit B** attached hereto and incorporated herein by reference and as may be amended from time to time, including, but not limited to, all ski tows or lifts, including towers, cables and structures or facilities used in direct connection with the operation of such tows or lifts; ski trails or runs; roads used in connection with maintenance or operation of tows, lifts, trails or runs; areas occupied or used for tow or lift lines; areas which are occupied by open racks for equipment which are available for use by the public; ski school meeting areas; and ski patrol facilities and first aid facilities for skiers; areas or facilities occupied or used for sale of ski tow or lift tickets, for sale of ski school lessons or for sale of skiing instruction, or for maintenance shops or for offices of the owner or operator of the Mountain Facility, or other Improvements on the Mountain Facility. The Mountain Facility is not part of the Property and is not a Site. At any time during the Declarant Control Period, the Declarant may amend, in its sole discretion, from time to time, Exhibit B and the description set forth in this Section, of the Mountain Facility to more accurately describe the Mountain Facility, and the consent of no other party shall be required.

2.54 **Overall Development Plan or ODP.** Overall Development Plan or ODP means the Moonlight Basin Ranch Amended Overall Development Plan dated 2007 and as approved by the Board of Madison County Commissioners at its meeting on November 27, 2007 and as may be subsequently amended, modified, restated or otherwise changed with the approval of the Board of Madison County Commissioners. The inclusion of property within the ODP shall not, under any circumstances, obligate Declarant to subject such property to this Master Declaration, nor shall the omission of any property from the ODP bar its later submission to this Master Declaration in the manner provided herein for the expansion of the Property. The ODP is intended to be dynamic and, subject to land use regulations of governmental entities, the ODP

may be changed by Declarant at any time for any reason with the approval of the Board of Madison County Commissioners and without requiring the consent of any other Person. The entirety of the Property is not required to be part of the ODP, and as of the date of this Master Declaration, not all of the entirety of the Annexable Area is part of the ODP.

**2.55 Owner.** Owner means the record holder of legal title to the fee simple interest in a Site and any Interval Owner, but excluding (a) contract purchasers or holders only of beneficial title unless the record holder has designated in a writing delivered to the Association that such contract purchaser or beneficial title holder is, until further notice, to be deemed to stand in place of the record holder, (b) the Association, (c) the owner of the Mountain Facility, and (d) those having an interest merely as security for the performance of an obligation, unless and until a foreclosure or other effective transfer has been completed and all redemption periods have expired. The term Owner shall include Declarant to the extent it is the record owner of fee simple title to a Site.

**2.56 Person.** Person means any natural person, corporation, partnership, limited liability company, association, trustee, or any other legal entity.

**2.57 Plat.** Plat means a graphical representation of a subdivision within the Moonlight Basin Community showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications that satisfies the requirements of the Montana Subdivision and Platting Act and Madison County requirements.

**2.58 Property.** Property has the meaning given to it in **Section 1.2**.

**2.59 Public Record.** Public Record means the office of the Clerk and Recorder of Madison County, Montana where land records are recorded or filed.

**2.60 Record Date.** Record Date means the date set by the Board for determining the Members entitled to receive notice of any regular, special or annual meeting. If no date is set by the Board, then such date will be determined by statute under §35-2-532, MCA.

**2.61 Residential Site.** Residential Site means any Site that has been designated for residential purposes under the ODP and would count against the number of allocated residential units permitted under the ODP, including all Bed and Breakfasts and home occupancies permitted pursuant to **Section 7.2**, but excluding such Sites that are used for a Lodge, commercial real estate as determined under the ODP and used for such purposes, or Sites used for Businesses.

**2.62 Resort Area.** Resort Area means skiing and recreation areas, and may include the Mountain Facility.

**2.63 Roadway.** Roadway means the Big Sky Roadway commonly referred to as the "Jack Creek Road" or "Madison Road" more particularly described in the "Big Sky Roadway Declaration for Moonlight Basin Ranch" dated March 16, 1993, and recorded in the Public Record on March 16, 1993 at Book 369, Page 257 and as subsequently amended, where the

rights of Moonlight Basin Ranch Limited Partnership (being the "Declarant" under such Big Sky Roadway Declaration for Moonlight Basin Ranch) have been assigned pursuant to an Assignment and Conveyance of Declarant's Rights recorded in the Public Record on January 19, 2012 as Document Number 144092 and subsequently assigned to Declarant pursuant to Assignment of Big Sky Roadway A/K/A Jack Creek Road and Declarant's Rights, recorded in the Public Record on October 1, 2013 as Document Number 152842. The Roadway shall include, but not be limited to, the portion of the Roadway owned in fee simple by the Declarant as of the date of this Master Declaration, which is shown on the Certificate of Survey recorded in the Public Record on March 9, 1999 at Book 7 of Surveys, Page 1328 and as subsequently amended, and the rights of Declarant under that certain Grant of Easement from the Jack Creek Preserve Foundation recorded in the Public Record on May 5, 2009 as Document Number 131130 and under that certain Grant of Trail Easement and Agreement from Jon and Dorothy Fossel recorded in the Public Record on October 27, 1995, at Book 393, Page 846. The Roadway shall be subject to all grants of use, access easements, and access licenses granted by Moonlight Basin Ranch Limited Partnership and all successors in interest in title to the Roadway.

**2.64 Rules and Regulations.** Rules and Regulations mean any instruments adopted by the Association for the regulation and management of the Property or any portion thereof, as the same may be amended from time to time.

**2.65 Site.** Site means each parcel of real property within the Property the fee simple interest of which may be conveyed in its entirety to a third party without violating the subdivision regulations of Madison County, Montana as in effect and from time to time amended, including UOA Sites. Notwithstanding the foregoing, a parcel of real property owned, held, or used in its entirety by the Association shall not be considered a Site. Moreover, a parcel of land legally described by a Certificate of Survey or which is unplatted and owned by Declarant or any other party, regardless of the acreage shall be considered as only one Site, even though various parts thereof might be conveyed without violating the subdivision regulations of Madison County, Montana. Neither the Mountain Facility nor the Golf Course Property are considered Sites.

**2.66 Special Declarant Rights.** Special Declarant Rights means the rights set forth in **Section 6.7(a)**.

**2.67 Special Benefits Area.** Special Benefits Area means a group of Sites designated as a Special Benefits Area in a Supplemental Declaration, or by the Declarant or a pursuant to a vote as provided in **Section 3.12** below, where Members<sup>3</sup> who hold Memberships appurtenant to such Sites are granted the right to use the Special Benefits Amenities or to receive special services or benefits, or both.

**2.68 Special Benefits Amenity.** Special Benefits Amenity means a Facility designated for use by or benefiting Members in a Special Benefits Area and not all Owners

within the Property as a whole, or special services or benefits that are provided by the Association to, or primarily for the benefit of, the Sites within a Special Benefits Area.

2.69 **Staff.** Staff means the employees or agents of the Association.

2.70 **Sub-association.** Sub-association means an incorporated property owners association, other than the Association, that is established pursuant to a Supplemental Declaration or a Condominium Declaration for real property within the Property.

2.71 **Supplemental Declaration.** Supplemental Declaration means a declaration of protective covenants, which supplements this Master Declaration pursuant to the terms of this Master Declaration, which is recorded in the Public Record and applicable to real property within the Property. Each Supplemental Declaration shall reference the provisions of this Master Declaration, shall state that the provisions of this Master Declaration apply to the property subject to the Supplemental Declaration subject to the provisions of the Supplemental Declaration and the conflicts provisions set forth in **Section 3.23**, provided, however that a reference to this Master Declaration in a Supplemental Declaration shall be deemed to incorporate the provisions of this sentence. Each Supplemental Declaration shall describe the property subject to such Supplemental Declaration.

2.72 **UOA Site.** UOA Site means a condominium unit that is a legally described division of real property subject to the Unit Ownership Act or a townhome or townhouse that is a legally described division of real property subject to the Unit Ownership Act.

2.73 **Unit Ownership Act or "UOA"** . Unit Ownership Act means the Montana Unit Ownership Act, §70-23-101 *et seq.*, MCA as amended, replaced or supplemented.

2.74 **Written Ballot.** Written Ballot means a written instrument issued to each Member or, in the case of an Interval Owner, an association or appointed agent for Interval Owners for purposes of voting in situations in which action of the Members is to be taken or authorized with or without a meeting of the Members as provided in the Bylaws and applicable law.

### **Article 3**

#### **Certain Functions and Rights of Association**

3.1 **General.** Certain of the functions described in this **Article 3** are expressly made mandatory performance obligations of the Association. All other Functions described below are voluntary Functions that the Association may, but is not obligated to, elect to provide. For any voluntary Functions, the Association may elect which Functions to perform based on the budget as adopted by the Association.

3.2 **Mandatory Property Maintenance Function; Additional Discretionary Property Management Function.** The Association shall have the obligation, right, and authority to provide for the care, operation, management, maintenance, repair and replacement of all Facilities. Moreover, the Association may provide for the care and maintenance of other

areas of the Property if the Board, in its sole and exclusive discretion, deems such care and maintenance to be necessary or desirable for access to the boundary of or full utilization of any Site or any Improvements within the Moonlight Basin Community. Such Function may include, without limitation, removal of snow from and application of sand and salt to Enumerated Transportation Systems and operation, management, maintenance, repair, and replacement of Improvements. The Board shall be the sole judge as to the appropriate maintenance, operation, and management of the Facilities and, to the extent that such services are provided by the Association, other areas of the Property.

**3.3 Rights and Obligations as to Existing Developments and Sub-Associations; Managing Agent Function.** It would benefit the Property and all of the Moonlight Basin Community if the Existing Developments were incorporated into or otherwise commonly managed or operated by the Association. Therefore, the Association may accept and assume the rights and obligations of Declarant in relation to Existing Associations, or Sub-associations in relation to any Existing Associations, Sub-associations, or Existing Developments. In addition, the Association may enter into separate management agreements with Existing Associations and/or Existing Developments in relation to (i) the foregoing rights and obligations, (ii) providing design and architectural review services, and (iii) assessment collection and administration, and covenant and lien enforcement services.

(a) Assignment, assumption and management agreements entered into pursuant to this **Section 3.3** may be for mutually agreeable compensation, as determined by the Declarant and the Association and the other parties thereto. In the event that a management agreement is entered into by the Association pursuant to this Section, such management agreement shall only be terminable on the express terms set forth therein, and during the Declarant Control Period, may be terminated by the Association only upon obtaining the consent of Declarant.

(b) In conjunction with the Declarant entering into this Master Declaration, Moonlight Alpenglöw may assign to the Association and the Association may accept, all or any portion of the right, title and interest, assets and obligations of Moonlight Alpenglöw in relation to Existing Developments and the Property, which assignment and assumption, to the extent it is entered into, may be recorded in the Public Record.

**3.4 Public Health and Safety Function.** The Association may provide public health and safety services within or for the benefit of the Property within Moonlight Basin Community, including, but not limited to, providing temporary or emergency health care services and facilities, security personnel, security systems, fire protection facilities and equipment, and a fire water system, which may include periodic fire prevention inspections and equipment certifications or the acceptance of certain rights and obligations in relation to the foregoing as to portions or all of the Moonlight Basin Community, provided, however, that prior to providing any of the foregoing services, all required governmentally issued licenses shall be obtained.

**3.5 Solid Waste Collection and Disposal Function.** The Association may provide a central location for the disposal of all solid waste in the Property or, to the extent otherwise

reimbursed, within the Moonlight Basin Community, and to the extent such location is provided, will contract with a carrier authorized and regulated by the Montana Public Service Commission or other governmental entity for its removal. The Association may also provide a central location for the disposal of recyclables and contract with a company for its removal.

**3.6 Environmental Function.** The Association may implement programs to educate Members, Business Lessees, Licensees, Invitees and members of the general public regarding wildlife, wetlands and other environmental matters pertaining to the Moonlight Basin Community.

**3.7 Promotional Function.** Subject to the provisions of **Section 14.8**, through a Special Benefits Area or by the use of revenues that are from sources other than Assessments paid by Residential Site Owners or to the extent deemed to be a Direct Benefit, by the use of Community Transfer Fees, the Association may provide suitable and continuing programs to promote the Moonlight Basin Community as a whole, including, but not limited to, advertising and placing articles in news and other media, establishing uniform standards for promotional programs of individual Members, encouraging groups to hold conferences and negotiating arrangements and accommodations for such groups, conducting tour operations, publishing a newsletter, providing and operating reception and information centers. Such activities may be performed within or outside of the Moonlight Basin Community. Notwithstanding the foregoing, the promotional Function shall solely be in relation to the entirety of the Moonlight Basin Community, shall not include information about purchasing Sites, shall not solely promote the Mountain Facility, though it may include a description of the Mountain Facility as a part of the promotional message; provided, however, that seasonal emphasis on certain aspects of the Moonlight Basin Community, special promotions or similar activities as part of an overall balanced promotional program shall not be deemed to violate this limitation. The Association may undertake or fulfill this function hereunder in whole or in part in conjunction with or through any organization which may be engaged in the promotion of the local or state area ski industry, tourism or economy including, but not limited to, the Mountain Facility, Big Sky Chamber of Commerce, Visit Big Sky, Inc. governmental entities, quasi-governmental entities, or non-profit organizations.

**3.8 Other Functions.** The Association may undertake and perform other functions as the Board deems reasonable or necessary to carry out the provisions of this Master Declaration including but not limited to: "Parking Function" (which may include the construction, purchase, lease, maintenance of parking areas or structures for to accommodate Members, Business Lessees, Licensees, Invitees and members of the general public); "Transportation Function" (which may include providing the operation, maintenance and repair of one or more Enumerated Transportation Systems within the Moonlight Basin Community); "Recreation Function" (which may include providing recreational opportunities for Members, Business Lessees, Licensees, Invitees and members of the general public); and "Civic Function" (which may include construction, operation and maintenance of civic amenities or structures for the benefit of the Property within the Moonlight Basin Community, including, but not limited to recreation centers, concert venues, theaters, libraries, places of worship, meeting halls or similar facilities. The Association is authorized to expend Community Transfer Assessments in order to fulfill

these other functions. If the Association elects to undertake or perform other functions, the Board will adopt a resolution stating such election.

### **3.9 Right to Make Rules and Regulations.**

(a) The Association is authorized to and has the power to adopt, amend and enforce Rules and Regulations applicable to the Property and, when authority is conferred upon the Association, any other property managed by the Association, with respect to any Facility or Function, and to implement the provisions of the Governing Documents, including, but not limited to, Rules and Regulations to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate pedestrian and vehicular traffic; to regulate household animals, the environment and environmental practices; to regulate signs; to regulate any use of any and all Facilities to assure fullest enjoyment of use by the persons entitled to enjoy and use the same; to promote the general health, safety and welfare of persons within the Property; and to protect and preserve property and property rights.

(b) The DRB is authorized to and has the power to adopt, accept jurisdiction over, amend and enforce Design Guidelines applicable within the Property with respect to any matter that the DRB is authorized to review or for which the DRB is authorized to establish standards, including but not limited to, new Design Guidelines, revised Design Guidelines, existing Design Guidelines and procedures to be followed and material which must be provided by any Member or his authorized agents in order to obtain review of proposed construction by the DRB.

(c) All Rules and Regulations adopted by the Association and Design Guidelines adopted by the DRB shall be reasonable and shall be uniformly applied, except such rules may differentiate between reasonable categories of Sites, Members, Business Lessees, Licensees, Invitees or members of the general public, and in relation to Special Benefit Areas. The Association and DRB may provide for enforcement of any such Rules and Regulations and Design Guidelines, as the case may be, through reasonable and uniformly applied fines and penalties, through exclusion of violators from Facilities or from enjoyment of any Functions, or otherwise.

(d) Each Member, Licensee, Business Licensee, Invitee and member of the general public is hereby deemed to have notice of all Rules and Regulations adopted by the Association and Design Guidelines adopted by the DRB, whether or not the same has been recorded, and shall be obligated to and shall comply with and abide by such Rules and Regulations and Design Guidelines and pay such fines or penalties upon failure to comply with or abide by such fines or penalties upon failure to comply with or abide by such Rules and Regulations and Design Guidelines and such unpaid fines and penalties shall be enforceable in accordance with **Article 10**. Any current or potential Member, investor, lender or purchaser in relation to the Property may request that the Association or DRB provide a copy of the Rules and Regulations and the Design Guidelines to such Member. Upon the new adoption or material amendment of Rules and Regulations and Design Guidelines, the Association or DRB shall provide all current Members affected by such Rules and Regulations or Design Guidelines with



copies of such documents or notification of the adoption of such documents and notice as to where copies may be obtained. Copies of such documents may be made available at offices of the Association or its agents or on an electronic or otherwise generally accessible medium. Each Member is obligated to inform all Business Lessees, Licensees, and Invitees of the obligations and restrictions set forth in the Governing Documents, provided, however, that failure to so inform any Business Lessees, Licensees, or Invitees shall not impair the enforceability of any Governing Document.

**3.10 Use and Charges for Use of Facilities or Functions.** The Association may establish charges for use of Facilities to assist the Association in offsetting the costs and expenses of the Association, including, but not limited to, depreciation, capital expenses and reserves. The Association may also establish charges for providing any service as required or permitted by any Function on a regular or irregular basis to any Member, Business Lessee, Licensee, Invitee or member of the general public to assist the Association in offsetting the costs and expenses of the Association, including, but not limited to, depreciation, capital expenses and reserves. All charges established under this Section shall be reasonable and shall be uniformly applied, except such charges may differentiate between reasonable categories of Sites, Members, Business Lessees, Licensees, Invitees, Special Benefit Areas, or members of the general public, but shall not unreasonably differentiate for members of the general public. Each Member, Licensee, Invitee and member of the general public shall be obligated to and shall pay any such charges. No such charges shall be imposed to the extent that they compromise the tax-exempt status of the Association under the Internal Revenue Code. The Association may impose access restrictions, which restrictions shall be reasonable and shall be uniformly applied, except such restrictions may differentiate between reasonable categories of Sites, Members, Business Lessees, Licensees, Invitees, Special Benefit Areas, Existing Developments and portions of the Property, or members of the general public, but shall not unreasonably differentiate for members of the general public.

**3.11 Big Sky Roadway.** The Roadway shall be deemed a Special Benefits Amenity as to any portion of the Roadway where access is restricted by gates, guard houses or other mechanisms permitted on the Roadway and otherwise as is necessary to preserve the non-public nature of certain portions of the Roadway. The grant of an easement and access right over and any future conveyance of the Roadway shall be subject to the existing rights of use of various Persons as to the Roadway. Declarant reserves the right to convey fee simple title to the Roadway to the Association at any time in the Declarant's discretion. In addition, the Declarant reserves the right for itself, its successors and assigns and for Golf Course Property owners (who have been designated by Declarant from time to time in a writing in the Public Record as having such capacity), to (i) grant rights to use the Roadway to members of a club for the Golf Course Property or other Persons, in gross, as to all portions of the Roadway, including areas within any Special Benefit Area, or (ii) realign portions of the Roadway to the extent such realignment does not impair the access rights of any persons entitled to access to the Roadway. Such grants by Declarant or to members of a club for a Golf Course Property may be with or without charges being assessed on the beneficiaries of the rights.



### 3.12 Special Benefits Areas.

(a) **Purpose.** The purpose of a Special Benefits Area is to define which Members, Business Lessees, Licensees and Invitees can use a Special Benefits Amenity and to allow for a Special Benefits Area Assessment to be levied to provide for the payment of (i) the expense of providing, repairing, maintaining and replacing Special Benefits Amenities, and (ii) the additional bookkeeping and accounting expenses incurred due to the Special Benefits Area.

(b) **Designation of a Special Benefits Area by Declarant.** The Declarant shall have the right, without a vote of the Members, to (i) create a Special Benefits Area in relation to the Roadway, and (ii) create or expand the scope of Special Benefits Areas for Special Benefits Amenities or services that, in Declarant's sole discretion, qualify as Special Benefits Amenities, in a Supplemental Declaration or a Condominium Declaration in relation to Property owned by the Declarant.

(c) **Designation of a Special Benefits Area in General.** Except as provided in Section 3.16(b), any new Special Benefits Area or any new, increased or additional Special Benefits Amenities proposed to be provided to a group of Sites that have not yet been designated as a Special Benefits Area shall not be authorized unless all of the following occur: (i) at least sixty-seven percent (67%) of the Members whose Memberships are appurtenant to the area to be included within the proposed Special Benefits Area approve the new Special Benefits Amenity or creation of the Special Benefits Area, (ii) the Association and, during the Declarant Control Period, the Declarant, approve the new Special Benefits Amenity or creation of the Special Benefits Area, and (iii) any Members currently using the Facility, service or benefit proposed to be a Special Benefits Amenity are either going to be part of the Special Benefits Area or will continue to have rights to use such Facility, service or benefit in all material ways in the manner that they previously used them.

(d) **Memorializing a Special Benefits Area.** In the event a Special Benefits Area is designated under this Section 3.12, such designation shall be memorialized in a Supplemental Declaration. In the case of the designation of a Special Benefits Area by Declarant pursuant to Section 3.12(b), such Supplemental Declaration shall be executed by the Declarant. In the case of the designation of a Special Benefits Area pursuant to Section 3.12(c), such Supplemental Declaration shall be executed by the Chairman and attested to by the Secretary of the Association, setting forth the amendment and certifying that such Supplemental Declaration has been approved as required pursuant to Section 3.12(c). To the extent a Special Benefits Area is not within the Property, then such Special Benefits Area would need to meet the annexation and jurisdiction expansion provisions of Article 13. Other than the foregoing, no additional approvals shall be necessary for the Supplemental Declarations required pursuant to this Section 3.12.

(e) **Special Benefits Area Assessments.** The Association may and shall levy the Special Benefits Area Assessments set forth in Exhibit E.

**3.13 Taxes.** The Association shall pay all ad valorem real estate taxes, special improvement and other assessments (ordinary and extraordinary), ad valorem personal property taxes, and all other taxes, duties, charges, fees and payments required to be made to any governmental or quasi-governmental entity which shall be imposed, assessed or levied upon, or arise in connection with Facilities or Functions.

**3.14 Right to Acquire, Dispose and Improve Facilities.** The Association may acquire, by gift, purchase, lease, trade or any other method, own, operate, build, manage, maintain, rent, sell, develop, encumber, abandon, dispose and otherwise deal in and with real and personal property of every kind and character, tangible and intangible, wherever located, and interests of every sort therein; except that the Association may not convey a Facility that is owned by the Association without the Affirmative Vote of a Majority of the Classes, unless it is solely a Special Benefit Amenity, in which case only the affirmative vote (i.e., 51%) of the Members who are part of such Special Benefits Area, as well as the Declarant during the Declarant Control Period, shall be required. The Association may cause additional Improvements to be made as part of the Facilities, including the construction of any capital asset, in whole or in part, for the benefit of some or all of the Members, Business Lessees, Licensees, Invitees and members of the general public, subject to the restrictions set forth herein. The Association may grant easements, leases, licenses and concessions through or over the Facilities, including, but not limited to, easements (including conservation easements), rights-of-way, leases, licenses and concessions to suppliers of utilities (inclusive of Antennas) serving the Property or property in the Moonlight Basin Community for the purpose of accommodating minor encroachments onto the Facilities or other purposes that do not unreasonably interfere with the use and enjoyment of the Facilities.

**3.15 Governmental or Non-Profit Entity Successor.** Any Facility or any Function may be turned over to a governmental entity, quasi-governmental entity, or non-profit organization which is tax-exempt under the provisions of Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code, which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the Affirmative Vote of a Majority of the Classes, unless it is solely a Special Benefit Amenity, in which case only the affirmative vote of the Members who are part of such Special Benefits Area, as well as the Declarant during the Declarant Control Period, shall be required.

**3.16 Records.** The Association shall maintain its records in accordance with applicable law and the Bylaws.

**3.17 Rights of Association.** The Association shall have and may exercise any right or privilege given to it expressly by the Governing Documents or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Members. The powers and rights of the Association include, but are not limited to the right to:

- (a) adopt and amend the Bylaws by a majority vote of the Board, with such consents as are required pursuant to the Bylaws.
- (b) make capital expenditures, incur liabilities, to enter into contracts and agreements, and to provide services and functions as are necessary to effect the business of the Association, including, but not limited to hiring and discharging managing agents and other employees, agents, and independent contractors.
- (c) enter into agreements with adjacent property owners for the use of certain roads and/or Facilities within the Moonlight Basin Community, as well as, receiving a benefit of any of the Functions performed by the Association and address their proportionate share of the costs for such use and participation.
- (d) perform any Function. In addition, the Association may perform any Function by, through or under contractual agreements, licenses, or other arrangements with any governmental, quasi-governmental, private entity or any non-profit organization, as may be necessary or desirable.
- (e) adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Members.
- (f) pay the expenses of the Association, and to provide for the use and disposition of the insurance proceeds in the event of loss or damage.
- (g) purchase insurance policies, to protect the property of the Association against casualty, loss and to protect the Association, officers, directors, and Staff (when acting in their official capacity) from liability. The extent and specific nature of coverage shall be determined by the Board in accordance with **Section 11.1**.
- (h) provide for the indemnification of the Association's officers, directors and Staff through insurance policies maintained by the Association.
- (i) borrow funds in order to pay for any expenditure or outlay authorized by the Governing Documents, including, but not limited to, funds borrowed from Declarant or an affiliate thereof, and to execute all such instruments evidencing such indebtedness as may be necessary or advisable; and assign its right to future income, including the right to receive regular or special assessments, as security for any borrowed funds; provided, however, that the Association shall not use reserve funds or pledge its Facilities as collateral for any borrowed funds without the Affirmative Vote of a Majority of the Classes.
- (j) obtain and pay for legal, accounting and other professional and expert services.
- (k) deal with agencies, officers, boards, commissions, departments, and other governmental bodies on a local, state and federal basis to carry out the powers, duties and responsibilities herein.

(l) institute, defend or intervene in litigation, arbitration, mediation, or an administrative proceeding in its own name on behalf of itself on matters affecting the Property or take such action as it deems necessary to enforce the Governing Documents, subject to **Section 3.18**.

(m) in its discretion, appoint Persons to generally supervise and control the business of the Association and delegate certain powers, duties and responsibilities to such Persons.

(n) exercise all the powers that may be exercised by a Montana nonprofit corporation under the Act.

### **3.18 Conduct of Association Litigation:**

(a) In recognition of the expenses and disruption associated with litigation, prior to commencing an adversarial judicial or administrative proceeding in the name of the Association, the Association shall obtain the Affirmative Vote of a Majority of the Classes. This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents; (ii) the collection of Assessments (including, without limitation, the foreclosure of liens or any other action pursuant to **Section 5.6(d)**); (iii) proceedings involving challenges to ad valorem taxation or condemnation; (iv) the defense of claims filed against the Association or the assertion of ancillary claims or counterclaims in proceedings instituted against it; or (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract with the Association or any agent.

(b) No action requiring the approval of an Affirmative Vote of a Majority of the Classes to be instituted under this **Section 3.18(b)** shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorneys fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(c) Neither the Association nor any Member shall institute an action against any Person which arises out of an alleged defect in the design or construction of Property until: (i) Declarant and the Person who physically constructed the portion of the Property in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect (provided, however, that the terms of this Section shall not create an obligation of any Person to effect a repair of an alleged defect); (ii) the Association or Member has pursued their remedies under any express warranty covering all or any portion of the alleged defect; and (iii) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation. The provisions of this **Section** do not act as a bar to the Declarant bringing an action against a Person independent of the Association.

**3.19 Conflicts among Governing Documents.** In the event that there is any conflict or inconsistency between the provisions of Montana law, this Master Declaration, the Articles, the Bylaws and the Rules and Regulations, the provisions of Montana law, the Master Declaration, the Articles, the Bylaws and the Rules and Regulations (in that order) shall prevail. In the event there is a conflict between this Master Declaration and any Supplemental Declaration, the Supplemental Declaration shall control. For the purposes of this Section, in the event that a Supplemental Declaration expressly provides for less restrictive uses of property, then such express less-restrictive provision in the Supplemental Declaration shall be deemed to control as to the relevant Supplemental Declaration parcels. In the event of a conflict between any Condominium Declaration and the provisions of this Master Declaration, the Condominium Declaration shall control.

#### **Article 4 Membership and Voting**

##### **4.1 Regular Membership; Appurtenant Rights.**

**(a) Owners and Interval Owners.** Every Owner shall be a Member of the Association. There shall be only one Membership attributable to fee simple ownership of each Site within the Property. Every Interval Owner shall be a Member of the Association; provided, however, there shall be only one Membership attributable to fee simple ownership of each Site subject to an Interval Ownership Plan within the Property and the Membership shall be held by the Interval Owner in the same proportionate interest as fee simple title to the Site is held, subject to reasonable Board regulation and restrictions on voting, notices, and Assessment obligations as set forth in the Bylaws or otherwise.

**(b) Memberships Appurtenant.** Membership in the Association shall be limited to Owners, Interval Owners, and the Declarant Special Member. A party may hold more than one Membership and may also hold other forms of Membership.

**(i)** Each such Membership of an Owner and the benefits and burdens relating to that Membership shall be appurtenant to the fee simple title to each Site held by an Owner or title or interest under an Interval Ownership Plan held by an Interval Owner. The Owner shall automatically be the holder of the Membership appurtenant to that Site as set forth herein and title to and ownership of the Membership shall automatically pass with fee simple title or a transfer of an interest under an Interval Ownership Plan no matter how such title or interest is acquired whether by tax sale, foreclosure, deed in lieu of foreclosure regardless of the existence of a right of redemption or reversion. Membership may not be transferred separately from the fee simple title or interest pursuant to an Interval Ownership Plan in a Site.

**(ii)** By virtue of becoming an Owner, each such Person shall be deemed to consent to becoming a Member of the Association, and no such Person shall be entitled to opt out, resign, or withdraw from being a Member, regardless of whether any Person uses or does not use any Facility or is the beneficiary of any Function of the Association. The obligations of each Owner under this Master Declaration are mandatory, including, but not

limited to, the payment of ongoing Assessments, and all obligations of each Owner set forth herein, regardless of when specific obligations arise or become payable during the term of any Owner's ownership of a Site or interest in an Interval Ownership Plan, are deemed to be an obligation incurred and a commitment made as of the date of such Person becoming an Owner.

(c) **Assignment of Rights to a Business Lessee.** An Owner may assign or delegate to a Business Lessee all (but not less than all) of its rights under this Master Declaration as an Owner (and Member) as to an entire Site during the term of the Business Lessee's lease. To the extent the Association has written notice, the Association shall recognize any such assignment or delegation of its rights, provided that, to be effective, the assignment or delegation of rights shall be in writing and on terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with an approved by the Association. Notwithstanding the foregoing, no Owner shall be permitted to relieve itself of the responsibility for fulfillment of all obligations hereunder of an Owner arising during the period it is an Owner, and during the period of any assignment or delegation, the Business Lessee and Owner shall be jointly and severally liable for the obligations of the Owner under this Master Declaration.

**4.2 Joint Ownership; Joint and Several Liability.** If an Owner's interest in a Site or an Interval Owner's interest in a Site pursuant to an Interval Ownership Plan, is held by more than one Person (in tenancy in common, as joint tenants, or otherwise), the Membership appurtenant to such Site shall be shared by all such Persons in the same proportionate interest and by the same type of ownership as the Site or Interval Ownership Plan is held, subject to reasonable Board regulation and restrictions on voting, notices, and Assessment obligations as set forth in the Bylaws or otherwise. All such Persons shall be jointly and severally obligated to perform the responsibilities of the specific Owner or Interval Owner, as the case may be. The membership rights of an Owner or Interval Owner that is not a natural person may be exercised by any officer, director, partner, trustee, member or manager, or by an individual designated from time to time in a written instrument describing and certifying the authority of such Person provided to the Secretary of the Association. In a multiple interest owner situation, if more than one Person seeks to exercise the vote, the voting privilege shall be suspended. Neither the Association nor Declarant shall have any obligation to confirm, as among such multiple interest owners which of the Persons has the right to vote. In the case where there are multiple owners of a Site or a single Interval Owner interest, the liability of each Owner or Interval Owner in relation to the Governing Documents is joint and several.

**4.3 Declarant Special Member.** Declarant, during the Declarant Control Period, shall have and be deemed to be the Declarant Special Member in the Association whether or not Declarant is an Owner or Interval Owner. Declarant shall automatically be entitled to the benefits and subject to the burdens as the Declarant Special Member as set forth in the Governing Documents.

**4.4 Voting and Election of Directors.** Each Class shall have the voting rights set forth in the Bylaws. In addition, the Directors of the Board shall be elected as set forth in the Bylaws.

**Article 5**  
**Assessments, Association Expenses, Other Amounts,**  
**Lien for Sums Due Association; Enforcement**

**5.1 Personal Obligation for Assessments and Other Amounts.** Each Member in relation to such Member's Site shall be deemed to covenant and agree to pay to the Association and be liable for all Assessments, charges, fines, penalties or other amounts, to be levied, fixed, established and collected as set forth in the Governing Documents that become due while he is a Member as to each Site, such obligation being appurtenant to each Site. Each Site's allocation of Assessment obligations and such Member's obligation as to Assessments shall be set forth in this **Article 5** and **Exhibit E**.

(a) Failure of the Board to set assessment rates or to deliver or mail each Member an assessment notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay these Assessments or the effectiveness of the lien in relation to the Assessments. In such event, each Member shall continue to pay their respective Assessments on the same basis as during the last year for which an Assessment was made, if any, until a new budget becomes effective and new Assessments are levied pursuant thereto. Any such budget may include as an expense item any shortfall in amounts previously collected.

(b) No Member may exempt himself from liability for any Assessments or any other obligation under the Governing Documents by non-use of or abandonment of his Site or any other reason. The obligation to pay Assessments is a separate and independent covenant on the part of each Member in relation to a Site created as of the acceptance of any interest in a Site. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or Improvements, or from any other action the Association or Board takes.

(c) Declarant is not obligated to pay Assessments on any Site it owns until it is conveyed to a third party. During the Declarant Control Period, Declarant may, but is not obligated to, voluntarily subsidize the Association's budget by contribution, advance, loan, or in any manner the Declarant, in its sole discretion chooses. Any such voluntary subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Membership. Such voluntary subsidy in any year shall under no circumstance obligate the Declarant to continue to provide a subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

(d) In the case where an Owner or Interval Owner is not a natural person, or where there are multiple owners to one Site, written notice shall be provided to the Secretary of the Association stating which Person has authority to act and the obligation to pay any Assessment on behalf of the Owner and include that Person's name, mailing and physical address, telephone number and email address. Said notice shall be updated annually.



**5.2 Verification of Assessments Due.** Upon written request, the Association shall furnish to a Member or his title or mortgage company written or oral verification of the amount of such Assessments owing and whether the Member has paid such Assessment. The Association may require the advance payment of a reasonable processing fee for the issuance of such verification.

**5.3 Purpose of Assessments and Other Amounts.** The Assessments levied and any charge, fine, penalty or other amount collected by the Association shall be used exclusively to pay expenses and other obligations the Association may incur in performing any actions permitted or required under the Governing Documents, including, but not limited to, operating expenses (inclusive of the overall general administration of the Association), the costs of constructing or purchasing Facilities and performing Functions, the cost of all insurance premiums and applicable deductibles for insurance required under this Master Declaration, repayment of debt and debt service, providing security for third party obligations as provided in the Governing Documents, and all other Association Expenses. The Association may invest any funds allocated to reserves in a reasonable and prudent manner, provided, however, that nothing herein shall subject the Association to the duties of a trustee or limitations on categories of investments that a fiduciary may make, including, without limitation any obligation to diversification, and the other obligations of set forth in the Montana Uniform Prudent Investor Act §72-34-601 *et seq.* and all similar and replacement acts. Unless expressly required by a Governing Document, the Association will not refund or credit to any Member any excess funds (including reserves or community transfer assessments) collected by the Association.

**5.4 Types of Assessments.** The Association may and shall levy all of the Assessments set forth in **Exhibit E**. Each Member, as applicable, shall be obligated to and shall collect or pay, as applicable, the Common Assessments, Community Transfer Assessments, Default Assessments, Special Assessments and Special Benefit Area Assessments as levied by the Association, as defined and described in **Exhibit E**. As to Common Assessments, any Site subject to an Interval Ownership Plan will only have one Common Assessment allocated to that Site.

**5.5 Use of Community Transfer Assessments.** Community Transfer Assessments and any “transfer fees” collected by Moonlight Alpenglow that are expended by the Association can only be used for Direct Benefit, regardless of any other provision in this Master Declaration.

**5.6 Time for Payments; Effect of Non-payment of Sums Due Association: Lien and Remedies of the Association.**

(a) The amount of any Assessment, charge, fine, penalty or other amount payable by any Member shall become due and payable as specified in the Governing Documents.

(b) Any Assessment, charge, fine, penalty, or other amount not paid within sixty (60) days after the due date shall be delinquent, shall incur a late payment penalty in an amount to be set by the Board from time to time, not to exceed the maximum permitted by applicable law, and shall bear interest at a rate of fifteen percent (15%) per annum, or the



maximum amount allowed under Montana's usury laws, from the date due and payable until paid and the Member shall be obligated to pay all lien fees, legal fees and recording fees (as applicable).

(c) The Association has a lien on each Site for any Assessment levied against the Site or in relation to activities conducted on such Site and amounts due hereunder from the Owner or Interval Owner in relation to such Site.

(d) In the event an Owner or Interval Owner fails to pay sums due the Association within sixty (60) days of the due date, the Association may (i) bring an action at law to collect the lien or foreclose the lien against the real property in the same manner as a mortgage on real property, (ii) although not necessary in order to foreclose the lien, record notice of the Association's lien against the property being assessed, (iii) institute an action for a money judgment, (v) revoke any permit issued pursuant to **Section 7.2**, (vi) apply any deposits held by the Association or DRB to the amount due, and (vii) exercise any other remedy at law or equity. Each Assessment or other charge, together with interest and penalties thereon and all costs and expenses incurred by the Association to collect such Assessment, charge, fine, penalty or other amount, including reasonable attorneys' fees and disbursements, may be recovered by suit for a money judgment by the Association without foreclosing or waving any lien securing the same or may be recovered in any foreclosure.

(e) The recording of this Master Declaration constitutes record notice and perfection of a lien of the Association on all Sites. No further recordation or filing of any claim of any lien is required. The Association may, in its discretion, record or file an additional notice of that lien in the Public Record at the election of the Association. The priority of the lien of the Association shall be determined pursuant to **Section 5.7** and shall not be dependent upon the recording or filing date of any notice of lien recorded or filed in the Public Record, and shall be binding upon the Owner or Interval Owner and their successors. The Association, acting on behalf of the Members, shall have the power to bid (which may be a bid on credit, up to and including the amount secured by the lien) for the Site at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. During the period a Site is owned by the Association following foreclosure, no right to vote shall be exercised on behalf of the Site and no Assessment shall be assessed or levied on the Site. The Board may authorize the execution and recordation of a deed conveying title to the Site which deed shall be binding upon the Owner or Interval Owner and their successors, and all other parties.

**5.7 Priority and Non-subordination of the Lien.** The lien under this **Article 5** is prior to all other liens and encumbrances on a unit except: (a) liens and encumbrances recorded before the recordation of the Declaration, except to the extent subordinated pursuant to the form attached as **Exhibit F** or otherwise; (b) subject to the other provisions of this Section, a first mortgage or security interest granted to a bona fide, arms' length, third party lender on the Site recorded before the date on which the Assessment or amount sought to be enforced became delinquent; and (c) to the extent provided by applicable law, liens for real estate taxes and other governmental assessments or charges against the Site. The lien is also prior to all mortgages and security interests described in **Section 5.7(b)** to the extent of the Assessments for common

expenses based on the periodic budget adopted by the Association that would have become due in the absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien, unless federal regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters require a shorter period or allow a longer period for the measurement of the amount of the super-priority of the Association's lien, in which case the period for measurement of the amount of the Association's super-priority lien shall be such shorter or longer period. If federal or state regulations or written federal underwriting policies adopted by Federal Mortgage Underwriters either require a shorter period or allow for a longer period of priority for the lien of an association such as the Association, the period during which the lien is prior to all mortgages and security interests described in **Section 5.7(b)** shall be determined in accordance with those federal or state regulations or written federal underwriting policies, granting priority to the maximum period allowed.

**5.8 Liability of Members, Purchasers and Encumbrancers.** The amount of any Assessment, charge, fine or penalty payable by any Member shall be a joint and several obligation to the Association of such Member and such Member's heirs, devisees, personal representatives, successors and assigns. A Person acquiring fee simple title to a Site or an interest in an Interval Ownership Plan shall be jointly and severally liable with the former owner of the Site or the interest in the Interval Ownership Plan for all such amounts which had accrued and were payable at the time of the acquisition of the title or interest by such Person, without prejudice to such Person's right to recover any such amounts paid from the former Owner or Interval Owner. The provisions of this **Section 5.8**, however, are subject to the priority provisions of **Section 5.7**.

**5.9 Allocation of Association Expenses.** Except as otherwise provided in the Governing Documents, Assessments and Association Expenses shall be allocated in accordance with this **Article 5** and **Exhibit E**.

## **Article 6**

### **Certain Rights of Declarant and Associations**

#### **6.1 Declarant's Easements and Related Rights.**

(a) Declarant hereby reserves to itself for itself and for the benefit of its Business Lessees, Licensees, Invitees, successors and assigns a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Facilities as may be reasonable necessary to (i) discharge Declarant's obligations under this Master Declaration; (ii) exercise any Special Declarant Right pursuant to **Section 6.7** below; (iii) make Improvements within the Property on property owned by the Declarant or Facilities of the Association; and (iv) maintain, repair, access, replace, construct, use, operate utilities where they are located within the Property as of the date of this Master Declaration or any relocated facilities.

(b) Declarant hereby reserves to itself for itself and for the benefit of its Business Lessees, Licensees, Invitees, successors and assigns, the right from time to time to establish and use non-exclusive, perpetual utility and other easements, leases, permits or licenses

on, over, upon, across, above, under and through the Facilities for uses for the Association, including, without limitation, in relation to any Improvements; and to create other reservations, exceptions and exclusions for the Association, in order to serve all persons residing, visiting or doing business within the Property; provided that any such easement, lease, permit or license does not unreasonably impair the use of the Facilities for their intended purpose or unreasonably impair construction within any established Building Envelopes.

(c) Declarant hereby reserves to itself for itself and for the benefit of its Business Lessees, Licensees, Invitees, successors and assigns, the right at any time, and from time to time, to close or restrict the use of any access roads within or in the vicinity of the Moonlight Basin Community; provided, however, that access by an Owner or Interval Owner to his Site shall not be materially impaired for an unreasonable period of time.

**6.2 Rights and Obligations of Members.** Subject to the provisions of this Master Declaration and the power of the Association to regulate the use of, and convey or encumber the Facilities as set forth in the Governing Documents and any Special Benefit Areas, each Member, Business Lessee, Licensee and Invitee shall have a non-exclusive easement over, upon, across and with respect to any Facilities as appropriate and necessary for: access, ingress and egress to any Site and to use the Facilities and for all other purposes, subject to **Section 3.14** above and **Article 7** below.

**6.3 Association Easements.**

(a) Declarant hereby grants to the Association, Invitees, successors and assigns, a non-exclusive, perpetual easement on, over, upon, across, above, under and through the Property and each portion thereof to (i) exercise any right held by the Association under this Master Declaration or any other Governing Document, and (ii) perform any obligation imposed upon the Association by this Master Declaration or any other Governing Document. Notwithstanding the foregoing, the Association shall not enter upon any Site without reasonable prior notice to the Owner of the Site, except in cases of emergency.

(b) Without limiting the generality of the foregoing **Section 6.3(a)** and in addition to the easement rights granted thereunder, but subject to the provisions of **Section 6.1(c)** and **Section 3.11** and any Special Benefits Area, Declarant hereby grants to the Association, its Business Lessees, Licensees, Invitees, successors and assigns, a non-exclusive, perpetual easement on, over, upon, across, above and through all of the roadways constructed within rights of way designated on a Plat or Certificate of Survey filed by Declarant, Declarant's predecessors in interest, or Declarant's successors and/or roadways on unplatted property as access to the Moonlight Basin Community, whether or not such roadways are or ever become a part of the Moonlight Basin Community, for vehicular and pedestrian access to all Sites and Facilities, and for all other purposes related to the exercise of any right held by the Association under this Master Declaration or any other Governing Document, or the performance of any Function or obligation imposed upon the Association by this Master Declaration or any other Governing Document, subject to reasonable restrictions established by Declarant and any Rules and Regulations established by the Association.

(c) Declarant hereby grants to the Association, its Licensees, Invitees, successors and assigns, a non-exclusive, perpetual blanket easement upon, across, above and under all property within the Property for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other services such as, but not limited to, a master television Antenna system, cable television system, or security system which the Association may install or may have installed to serve the Property, provided, however, that use of such easements shall not unreasonably impair the use of the Facilities for their intended purpose or unreasonably impair construction within any established Building Envelopes. It shall be expressly permissible for the Association or its designee, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of wires, conduits, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Association shall have the right to grant such license or easement.

#### **6.4 Plat and Services Easements.**

(a) The Property shall be subject to all easements as shown on any Plat or Certificate of Survey and to any other easements of record or of use. In addition, the Property is subject to all easements created by this Master Declaration. Each Owner and Interval Owner by accepting a deed to a Site, agrees for themselves and their Business Lessees, Licensees, Invitees and successors and assigns, to be subject to such easements and the Rules and Regulations from time to time in effect governing the use of such easement areas.

(b) Declarant hereby grants a non-exclusive perpetual easement across and over the Property for ingress and egress to all police, sheriff, fire protection, ambulance and similar emergency agencies or persons, now or hereafter serving the Property, to enter the Property in the performance of their duties, subject, however, to limitations generally imposed by local, state and federal law.

#### **6.5 Easements for Mountain Facility and Golf Course Property.**

(a) **Mountain Facility.** Declarant hereby grants to the owner (inclusive of its designated operator) of the Mountain Facility, its Licensees, Invitees, successors and assigns, a non-exclusive, perpetual easement on, over, upon, across, above and through all of the roadways constructed within rights of way designated on a Plat or Certificate of Survey and/or roadways on unplatted property that also provide access to the Moonlight Basin Community, whether or not such roadways are or ever become a part of the Moonlight Basin Community, for vehicular and pedestrian access to the Mountain Facility, subject to reasonable restrictions established by Declarant and any Rules and Regulations established by the Association, including, but not limited to, the right of the Association to establish reasonable, primary access points for users of the Mountain Facility. Notwithstanding the foregoing, the easement granted pursuant to this **Section** shall not be deemed to be a grant of an easement over the portion of the Roadway where access is restricted by gates, guard houses or other mechanisms permitted on the Roadway by

applicable governmental authority and otherwise as is necessary to preserve the non-public nature of certain portions of the Roadway.

**(b) Golf Course Property.** Declarant hereby grants to the owner of the Golf Course Property, its Licensees, Invitees, successors and assigns, a non-exclusive, perpetual easement on, over, upon, across, above and through all of the roadways constructed within rights of way designated on a Plat or Certificate of Survey and/or roadways on unplatted property that also provide access to the Moonlight Basin Community, whether or not such roadways are or ever become a part of the Moonlight Basin Community, for vehicular and pedestrian access to the Golf Course Property, subject to reasonable restrictions established by Declarant and any Rules and Regulations established by the Association, including, but not limited to, the right of the Association to establish reasonable, primary access points for users of the Golf Course Property. Notwithstanding the foregoing, the easement granted pursuant to this **Section** shall not be deemed to be a grant of an easement over the portion of the Roadway where access is restricted by gates, guard houses or other mechanisms permitted on the Roadway by applicable governmental authority and otherwise as is necessary to preserve the non-public nature of certain portions of the Roadway unless such access is specifically contemplated in any club documents for a Golf Course Property.

**6.6 Enjoyment of Functions and Facilities.** There shall be no obstruction of any Facilities, nor shall anything be stored in or on any part of any Facility, without the prior written consent of the Association. Nothing shall be altered on, constructed in or removed from any Facilities, except with the prior written consent of the Association. Nothing shall be done or kept on or in any Facility, that would result in cancellation of the insurance or any part thereof which the Association is required to maintain pursuant hereto or increase the rate of the insurance or any part thereof over the amount that the Association, but for that activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept on or in such Facility that would be in violation of any statute, rule, ordinance, regulations, permit or other requirement of any governmental or quasi-governmental entity. No damage to, or waste of, Facilities shall be committed, and each Member shall indemnify, defend and hold the Association and other Members harmless against all loss resulting from any such damage or waste caused by such Member, or such Member's Business Lessee, Licensee or Invitee. No noxious, destructive or offensive activity shall be carried on with respect to any Facility, nor shall anything be done therein or thereon which may be or become a nuisance to any other member of the general public, Member or Invitee. All restrictions contained in **Article 7** below shall also be deemed to apply to the Facilities.

**6.7 Special Declarant Rights.** Declarant hereby reserves for itself and its successors and assigns the following rights, which rights may be exercised at any time during the Declarant Control Period (collectively the "**Special Declarant Rights**"):

**(a)** The right to complete any Improvements on the Property or shown on any Plat or Certificate of Survey filed by Declarant, Declarant's predecessors or Declarant's successors, and the right to construct any Improvement that Declarant deems necessary or advisable on any Facility or any property owned by Declarant;

(b) The right to construct and maintain sales offices, trailer, booths, improvements or other structures used for sales or promotional purposes, management offices and models on any Facility, or any property owned by Declarant. Declarant also reserves for itself and its successors and assigns the right to construct and maintain signs advertising the Moonlight Basin Community and properties therein. The number, size and location of any such sales structures and signage, management offices or models or the relocation thereof shall be determined by Declarant;

(c) The right to exercise any development right, including, without limitation, the right to add real property to the Property pursuant to **Article 13** and to make that real property subject to this Master Declaration and the Overall Development Plan, the right to amend this Master Declaration to create additional Sites and Facilities within the Property, the right to subdivide Sites, the right to convert any and all Sites into Facilities, the right to record Supplemental Declarations and Condominium Declarations and the right to withdraw any and all portions of the Property from being deemed part of the Property subject to this Master Declaration as provided in **Article 13** and thus remove it from this Master Declaration and, potentially and subject to applicable governmental approvals, the Overall Development Plan;

(d) The right to use easements through the Facilities for the purpose of making Improvements within the Property or within real property which may be added to the Property;

(e) The right to designate real property or Facilities owned by Declarant within the Property for fire, police, utility service operation facilities (*i.e.*, electric power, propane, sanitation, etc.), water and sewer facilities, public schools and parks, and other public facilities.

(f) The right to merge or consolidate the Association with a property owners association of the same form of ownership.

**6.8 Transfers of Special Declarant Rights and Rights as Declarant.** The term “**Declarant’s Rights**” means, collectively, the Special Declarant Rights defined herein as well as all other rights of the Declarant under this Declaration and the rights of a declarant under applicable law. Nothing in this **Section 6.8** subjects any successor to a Declarant’s Right to any claims against or other obligations of a transferor Declarant, other than claims and obligations expressly arising under this **Article 6** or this Master Declaration.

(a) Any or all of the Declarant’s Rights and any rights and obligations of Declarant set forth in this Master Declaration or the other Governing Documents may be transferred by the Person holding the same in whole or in part to other Persons during the Declarant Control Period; provided, (i) the transfer shall not reduce an obligation or enlarge a right beyond that which Declarant has under this Master Declaration, and (ii) any such transfer shall only be effective if it is in a written instrument signed and recorded in the Public Record by Declarant and the transferee.

(b) Upon transfer of any of Declarant's Rights, the liability of a transferor is as follows:

(i) A transferor is not relieved of any obligation or liability arising before the transfer.

(ii) If a successor to any of Declarant's Rights is an affiliate of a Declarant, the transferor is jointly and severally liable with the successor for the liabilities and obligations of the successor which relate to the Property.

(iii) If a transferor retains any of Declarant's Rights but transfers other Declarant's Rights to a successor who is not an affiliate of the Declarant, the transferor is liable for any obligations or liabilities imposed on a Declarant by this Article or by this Master Declaration relating to the retained Declarant's Rights and arising after the transfer.

(iv) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a Declarant's Right by a successor who is not an affiliate of the transferor.

(c) Notwithstanding the above provisions of **Section 6.8**, unless otherwise provided in a mortgage or other agreement creating a security interest encumbering Declarant's Rights, in case of foreclosure or exercise of a power of sale of the mortgage or security interest or a tax sale, judicial sale, or sale under bankruptcy or receivership proceedings of any Sites owned by Declarant or a holder of Declarant's Rights, a Person acquiring title to all the property being foreclosed or sold succeeds to only (i) the Declarant's status as Declarant, if the foreclosure or sale was as to all Sites and portions of the Property owned by the Declarant, and (ii) those Special Declarant Rights related to that property held by the Declarant or holder of the Special Declarant Rights (which may be limited to rights described in **Section 6.7(e)(iii)** or (iv), in each case, solely to the extent they are specified in a written instrument prepared, executed, and recorded by such Person at or about the same time as the judgment or instrument or by which such Person obtained title to all of the property being foreclosed or sold.

(d) Upon foreclosure or exercise of a power of sale of a mortgage or security interest, or a tax sale, judicial sale, or sale under bankruptcy act or receivership proceedings of all interests in the Property owned by the Declarant or a holder of Special Declarant Rights, the Declarant or a holder of the Special Declarant Rights ceases to have any Special Declarant Rights and the Declarant Control Period terminates unless the instrument which is required by **Section 6.8(c)** is prepared, executed, and recorded at or about the same time as the judgment or instrument conveying title provides for transfer of the Declarant's rights as a Declarant and all of such Person's Special Declarant Rights to a successor.

(e) The liabilities and obligations of Persons who succeed to Special Declarant Rights are as follows:

(i) A successor to any Special Declarant Rights who is an affiliate of a Declarant or holder of a Special Declarant Right is subject to all obligations and liabilities

imposed on any Declarant or holder of a Special Declarant Rights by this Article or by this Master Declaration.

(ii) A successor to any Special Declarant Right, other than a successor described in **Subsections (iii) and (iv)** of this **Section 6.8(e)** or a successor who is an affiliate of a Declarant or holder of a Special Declarant Right, is subject to all obligations and liabilities imposed by this Master Declaration: **(A)** on a Declarant which relate to the successor's exercise or non-exercise of Special Declarant Rights; or **(B)** on Declarant's transferor, other than: **(a)** misrepresentations by any previous Declarant or holder of Special Declarant Rights; **(b)** warranty obligations on improvements made by any previous Declarant or holder of Special Declarant Rights or made before this Master Declaration was entered into; **(c)** breach of any fiduciary obligation by any previous Declarant or holder of Special Declarant Rights or such Declarant's or holder's appointees to the Board; or **(d)** any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(iii) A successor to only a right reserved in the Master Declaration to maintain sales offices, trailer, booths, improvements or other structures used for sales or promotional purposes, management offices and models, and signage advertising the Moonlight Basin Community and properties therein, if such successor is not an affiliate of a Declarant, may not exercise any other Special Declarant Right and is not subject to any liability or obligation as Declarant or holder of Special Declarant Rights.

(iv) A successor to all Special Declarant Rights held by a transferor who succeeded to those rights pursuant to the instrument prepared, executed, and recorded by such person pursuant to the provisions of **Section 6.8(c)** may declare such successor's intention in such recorded instrument to hold those rights solely for transfer to another Person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Site or real estate subject to Special Declarant Rights owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than the right held by such successor's transferor to make appointments to the Board as set forth in the Governing Documents for the duration of any Declarant Control Period. So long as such successor may not and does not exercise Special Declarant Rights under this **Section 6.8(e)(iv)**, such successor is not subject to any liability or obligation as a Declarant.

**6.9 Rights of Declarant after Declarant Control Period Terminates.** After termination of the Declarant Control Period, Declarant if still an Owner or Interval Owner, will have all of the Special Declarant Rights related to its owned Sites as well as all other rights and duties given to Members under the Governing Documents.

**6.10 Right to Develop.** The completion of construction and the sale or other disposal of Sites by Declarant is essential to the development of the Property as a community. Accordingly, nothing in this Master Declaration or the other Governing Documents shall be construed to prevent Declarant, its contractors or subcontractors, from exercising, in their sole discretion, any Special Declarant Right and utilizing any easement, right or privilege granted by this Master Declaration or otherwise doing upon the Facilities or portions of the Property owned



by Declarant whatever is necessary or advisable in connection with the development and sale of Sites or amenities in relation to the Property and the Moonlight Basin Community.

**6.11 Annual Business Licenses.** During the Declarant Control Period, any Person, including an Owner, Interval Owner, Business Lessee or Licensee, who wishes to operate any Business on the Property shall be required to apply for and receive an Annual Business License from the Declarant. The Declarant can establish reasonable and uniformly applied permitted uses, licensure requirements and a fee schedule for Annual Business Licenses, provided, however, that permitted uses, licensure requirements and fees may differentiate between reasonable categories of Sites, Members, Business Lessees, Licensees, Invitees or members of the general public, and in relation to Special Benefit Areas or other geographical areas and potential uses at the Property. In the event a Member fails to pay required Assessments, the Annual Business License of any Owner, Business Lessee or Licensee operating on such Site may be revoked by the Declarant upon thirty (30) days prior written notice to the Owner where such failure remains uncured. The Declarant may in its sole discretion suspend or terminate the process of issuing Annual Business Licenses, or may assign its rights under this **Section 6.10** to the Association, at any time prior to the end of the Declarant Control Period. At the end of the Declarant Control Period the right to issue Annual Business Licenses shall be within the Association's control if not already assigned.

## **Article 7**

### **Restrictions Applicable to Property**

**7.1 Land Use Restrictions.** In addition to the restrictions found in this Article, all or any portion of the Property shall be further restricted in its use, density or design according to the Overall Development Plan; any Supplemental Declarations; any Condominium Declaration; Rules and Regulations (including but not limited to the regulation of signs, the keeping and use of recreational vehicles, restrictions on adult entertainment uses; etc.); Design Guidelines; subdivision regulations, designations and agreements; wildlife agreements, wildfire mitigation guidelines and conservation guidelines entered into by Declarant or Association in connection with the development of the Property; zoning regulations adopted by governmental authorities; and similar matters. Each Member, Business Lessee, Licensee and Invitee shall comply with all of the terms, provisions, covenants, conditions, restrictions, easements and reservations to be complied with under this Master Declaration, including those referenced above, those imposed by the land use restrictions in this Article and any applicable Supplemental Declaration and Condominium Declaration.

### **7.2 Occupancy Limitation.**

**(a)** All Residential Sites may be used only for dwelling purposes and typical residential activities. No portion of the Property or a residence shall be used for living or sleeping purposes other than rooms designed for living or sleeping in a completed structure for which the DRB has issued a certificate of substantial completion. No room in any structure shall be used for living or sleeping purposes by more persons than it was designed to reasonably accommodate. Owners may rent or lease their Residential Sites to others for residential

purposes, except as may be prohibited in a Supplemental Declaration or a Condominium Declaration. Notwithstanding anything to the contrary contained in this Section, a gainful home occupation, profession, trade or other non-residential use will be a permissible use of Residential Sites, so long as: (i) such use is permitted by the ODP and not prohibited by law, (ii) such use is not restricted by this Master Declaration, (iii) such use is carried on entirely within a Residential Site and is secondary and incidental to its use as a residence, (iv) there is no generation of pedestrian or vehicular traffic beyond that customary or incidental to residential use of the dwelling, (v) there is no use of commercial vehicles for deliveries to or from the premises, (vi) there is no on-premises sales of products, (vii) there is no external evidence of any such activity being conducted, including, but not limited to, no signs or structures advertising the occupation and no excessive or unsightly storage of materials or supplies, (viii) the home occupation does not employ any non-resident of the Residential Site, nor does it attract any non-resident customers, (ix) the Owner receives and maintains a permit from the Association for such use, which permit may be granted, denied or revoked in the Association's sole, but not arbitrary and capricious, discretion, and (x) the use is conducted in compliance with any applicable Supplemental Declaration, Condominium Declaration, the Rules and Regulations and Design Guidelines. For guidance, the following uses are examples of potentially permissible home occupations: the making of clothing; the giving of music lessons; a sole practitioner professional practice; service or product providers who maintain a telephone and office within the residence but the services and products are not provided or sold from the Residential Site; the pursuit of artistic endeavors, provided that the products are not marketed and sold from the Residential Site, and no kilns or foundries are used on the Residential Site.

(b) Notwithstanding anything to the contrary contained in this Section, Bed and Breakfast operations will be a permissible use of a Residential Site where specifically contemplated by any Supplemental Declaration and so long as (i) such use is permitted by the ODP and by law, (ii) the Owner receives and maintains a permit from the Association for such use, which permit may be granted, denied or revoked in the Association's sole, but not arbitrary and capricious, discretion, and (iii) the use is conducted in compliance with the applicable Rules and Regulations and Design Guidelines.

(c) Nothing contained in this Master Declaration shall be construed to prohibit the employment of household employees for the Residential Site whether such household employee resides off the premises or, in conformity with the requirements as to permitted uses and overcrowding, on the premises.

**7.3 Maintenance of Site.** All Sites, except for any portion of the Site then undergoing any Construction Activity, including all Improvements on such Site and all unimproved sites, shall be kept and maintained in a clean, safe, attractive and sightly condition and in good repair.

**7.4 Approval of Construction Activities.** Unless the approval of the DRB through processes set forth in **Article 8** is obtained in advance, and unless all approvals as may be required by Supplemental Declarations, Condominium Declarations, the Governing Documents and by any governmental or quasi-governmental entity having jurisdiction over the Property

have been obtained in advance by the relevant Member, (i) no Improvements shall be constructed, erected, placed or installed upon any Site, (ii) no change or alteration of the materials or appearance (including, but not limited to, color) of the exterior of any Improvements shall be made, (iii) no excavation or change in the grade of any Site or earth movement shall be performed, (iv) no healthy vegetation or trees shall be cut or removed from any Site, subject to the provisions of **Section 7.5**, (v) no physical or cosmetic alteration or modification to existing Improvements shall be made, and (vi) no other Construction Activity shall be initiated or performed.

**7.5 Fire Precautions.** The purpose of this Section is to minimize the likelihood and effect of an uncontrolled fire within the Property. All Owners are subject to the following:

(a) Each Owner shall keep grass, shrubbery and timber on his Site trimmed in order to reduce the danger of fire within a Site and shall otherwise maintain the Improvements and the general condition of a Site to minimize fire hazards, as well as:

(i) Keep the grass mowed and watered in at least 30 feet of any structures in all directions;

(ii) Maintain a 3 foot non-combustible zone (washed rock or other decorative, non-combustible medium) along the edge of any structure to prevent fires from reaching the building;

(iii) Trim all tree limbs so that there are no branches within 6 feet of the ground and do not allow trees to be placed within 5 feet of a structure, which includes pruning limbs so that they do not come within 5 feet of a structure;

(iv) Move dead limbs and other fallen timber to at least 30 feet from any structure and dispose of them at the earliest reasonable opportunity;

(v) Not place shrubbery within five (5) feet of any residential structure and any outbuildings unless precautions (*i.e.*, frequent irrigation) are taken to prevent the same from becoming dry and therefore a fire hazard.

(b) In addition to any conditions set forth in the Design Guidelines or Supplemental Declarations or Condominium Declarations, all Owners shall take the following fire precautions:

(i) Keep the roof, eaves, troughs of all structures free from any debris such as dust, pine needles or other materials which may be flammable;

(ii) Not allow any burning barrels or pits of any sort;

(iii) Not light or permit any open fire except in a contained barbecue unit while attended and in use for cooking purposes or with a safe and well-designed interior wood or gas burning device, excepting, however, campfires or picnic fires on property

designated for such use by Declarant or by the Association and controlled and attended fires authorized in writing by Declarant or the Association and required for clearing or maintenance of the land;

- (iv) Not discharge fireworks on any portion of a Site;
- (v) Not install a shake roof;
- (vi) Maintain address numbering which is clearly visible from the roadway on the outside of the residence or via an approved sign at the end of a driveway;
- (vii) Keep all roads and driveways free of obstruction to ensure access by emergency vehicles; and
- (viii) Not store firewood within 10 feet of a structure except seasonally when there is snow on the ground.

(c) In addition to any Design Guidelines or Supplemental Declarations or Condominium Declarations, all structures must be constructed in accordance with the following requirements:

(i) As outlined below, all Sites shall be constructed with an automatic fire sprinkler system meeting the requirements of the most current edition of applicable NFPA standards and the fire protection standards set by the fire department having jurisdiction over the area. The Owner shall submit a stamped set of engineered sprinkler system plans to the Big Sky Fire Department for review and approval prior to construction;

(A) All residences over 3600 square feet in size shall have automatic fire sprinklers installed;

(B) Residences less than 3600 square feet in size without adequate firefighting water supplies as determined by the Big Sky Fire Department shall have automatic fire sprinklers installed;

(C) Residences less than 3600 square feet in size with nearby firefighting water supplies will not be required to have automatic fire sprinklers installed if the supply has been evaluated by the Big Sky Fire Department and found to meet firefighting requirements;

- (ii) Class A fire-rated roofing materials shall be used;
- (iii) Spark arrestor screens shall be placed on all fireplace and woodstove chimneys;
- (iv) Smoke detectors shall be installed on every level of a structure and in each bedroom; and

(v) Wooden decks shall not have storage underneath them and shall have non-combustible materials in any under-deck area, such as washed rock or non-combustible medium, including dirt.

(d) No Person shall dispose carelessly of cigarettes or other flammable materials.

(e) The fire precautions contained in this Section shall not be amended without the Affirmative Vote of a Majority of the Classes and the affirmative vote of the Madison County Commission. The Madison County Commission shall consult the Big Sky Fire Department or any other governmental or quasi-governmental entity having jurisdiction over the Property for fire protection, prior to deletion, adoption or amendment of any fire precaution contained in this Section.

**7.6 Trash; Garbage; Organic and Inorganic Materials.** No trash, waste, garbage, litter, junk, refuse, weeds, brush, lumber, grass, shrub, soil, tree clippings or plant waste, compost, metals, concrete, building materials, bulk materials, scrap, boxes, containers, bottles, cans, implements, or unused items of any kind shall be kept, stored, thrown, dumped, allowed to accumulate, left or burned on any portion of the Property. No incinerator or other device for burning of trash or garbage shall be installed or used. Each Member shall dispose of their trash at the central location provided for by the Association for the disposal of all solid waste and/or recycling. In the event the Association has not provided for a central disposal location, then the Member shall provide suitable receptacles for the containment and collection of trash and garbage, which must be enclosed, comply with any ODP, Supplemental Declaration or Condominium Declaration requirement for bear proof garbage containment and be approved by the DRB. Notwithstanding the foregoing, a compost pile or barrel may be specifically allowed by a Supplemental Declaration if reviewed and approved by the DRB.

**7.7 Water and Sanitation.** All sites shall comply with water and sanitation use restrictions set forth in any Supplemental Declaration, Condominium Declaration or as required by applicable governmental authority. No surface water shall be used for Construction Activities. All Improvements on the Property designed for residential, commercial or lodging purposes shall be connected to such water and sewer services as the Association or applicable governmental agency may require.

**7.8 Preservation of Water Resources.** Members, Business Lessees, Licensees, Invitees and members of the general public shall at all times conduct their use and activities in a manner that will preserve the integrity of the springs, ponds, streams, and creeks within the Jack Creek drainage and the Madison watershed. The degradation or pollution of water is not permitted. All applicable local, state, and federal regulations, guidelines, and standards pertaining to water use must be followed. No Member shall install a man-made pond on a Site without the prior written approval of the Declarant during the Declarant Control Period and thereafter, the Association. Installation of a man-made pond shall constitute a Construction Activity and be subject to review by the DRB.

## **7.9 Wildlife Habitat, Hunting, Firearms.**

(a) In keeping with the purpose of this Master Declaration, Declarant reserves the right to utilize and manage all of the Property for the creation and enhancement of habitat for wildlife and native plants. It is also recognized by Declarant and the Members that wildlife species live in or migrate through the Property during various times of the year. The following limitations on use and development are intended, in addition to all other requirements of this Master Declaration, to protect, preserve and maintain the existing wildlife habitat in the Property and to minimize the adverse effects of development on the wildlife habitat.

(b) Hunting, capturing, trapping or killing of wildlife within the Property, is prohibited except as organized and conducted by Declarant or Association for game management purposes. The discharge of firearms is prohibited except in conjunction with game management hunts conducted by Declarant or Association, in accordance with a Supplemental Declaration, or except as otherwise authorized by Declarant or Association at a facility established for such purposes.

(c) No feeding or domestication of any wildlife shall be permitted. No salt licks, bird feeders, or other foods shall be placed upon any Site to entice wild animals to come upon a Site. Items such as bird feed, horse feed, grains, garbage and dog food shall be stored in bear proof containers.

**7.10 Noxious Weeds.** As to his Site, each Member shall control or eliminate all noxious weeds, as such "noxious weeds" are defined by the Madison County Weed List or other governmental authority or the Association or the DRB. Only herbicides approved for domestic use and/or approved by Madison County and/or the State of Montana for use around waterways may be used by Members.

**7.11 No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any Site nor shall anything be done or placed on any Site which is or may become a nuisance or cause any significant embarrassment, disturbance or annoyance to others. As used herein, the term "noxious or offensive activity" shall not include any activities of a Member, Declarant or their respective designees which are reasonably necessary to the development of and construction on the Property so long as such activities do not violate the Governing Documents or the statutes, rules or regulations of any governmental or quasi-governmental entity having jurisdiction with respect thereto and do not unreasonably interfere with any Member's use of his Site or with any Member's ingress and egress to or from his Site and a roadway. The term "noxious or offensive activity" shall specifically include, but not be limited to, smelting or refining metals, ores or petroleum or similar products; manufacturing, industrial uses, fabrication and testing facilities that create any noise, vibration, light, sound or odors that can be perceived from outside a wholly-enclosed building; storage in bulk of bulk or used materials; a landfill or a dump, provided, however, that transfer stations are specifically not prohibited pursuant to this sentence; a junkyard, scrap metal yard or auto salvage yard; pawn shops, flea markets or bankruptcy, fire sale or auction businesses, provided, however, that so long as an Annual Business License is obtained if otherwise required hereunder, a resale or

second-hand retail store is specifically not prohibited pursuant to this sentence; and any heavy manufacturing.

**7.12 Lights, Sounds and Odors.** All exterior lighting of Improvements and grounds on a Site will be subject to regulation by the DRB. Such DRB regulations may, at the election of the DRB, follow guidelines established by the International Dark-Sky Association ([www.darksky.org](http://www.darksky.org)) or meet some other standard as established by the DRB. No light shall be emitted from any Site which is unreasonably bright or causes unreasonable glare or shines directly onto an adjacent Site; no sound shall be emitted from any Site which is unreasonably loud or annoying; and no odor shall be emitted from any Site which is noxious or offensive to others. Notwithstanding the foregoing, any lights, sounds or odors that are emitted as part of the Resort Area operations as described in **Section 10.1** shall be exempt from the application of this Section.

**7.13 No Hazardous Activities.** No activities shall be conducted on any Site, no Improvements shall be constructed or performed on any Site, and no Construction Activities shall be conducted on any Site that are or might be unsafe or hazardous to any Person or property.

**7.14 No Unsightliness.** No unsightliness shall be permitted on any portion of the Property. Without limiting the generality of the foregoing:

(a) All unsightly structures, facilities, equipment, objects, and conditions shall be kept within an enclosed structure at all times;

(b) Motor vehicles classed by manufacturer rating as exceeding three-quarter ton, commercial vehicles, recreational vehicles, mobile homes, travel trailers, trailers, trucks (except pickup trucks used for personal, and not commercial transport), motorcycles, snowmobiles, golf carts, boats and other watercraft, boat trailers, tractors, ATVs, detached campers, camper shells, snow removal equipment and garden or maintenance equipment shall be kept in an enclosed structure at all times, except when in actual use; provided that such equipment and vehicles may be parked in areas specifically designated by the DRB for such equipment and vehicles;

(c) Service areas and facilities for hanging, drying or airing clothing or fabrics shall be kept within an enclosed structure;

(d) Mechanical and utility equipment, lines, wires, pipes, cables, tanks, poles, meters and other facilities, loading docks and sewage disposal systems or devices shall be screened or kept and maintained below the surface of the ground, or to the extent feasible, customary and sightly, as determined by the DRB, within an enclosed structure, subject to exceptions as determined at the discretion of the DRB;

(e) No tennis courts, outdoor swimming pools, or similar facilities shall be constructed on a Site unless specifically allowed by a Supplemental Declaration and reviewed and approved by the DRB.

**7.15 Repair of Improvements.** No Improvements hereafter constructed upon the Property shall be permitted to fall into disrepair, and each such Improvement shall at all times be kept in good condition and repair.

**7.16 Animals.** No animals shall be kept, raised, or bred on any Site except as in accordance with any Supplemental Declaration or Condominium Declaration and in accordance with such Rules and Regulations and Design Guidelines as may be established by the Association or DRB. The grazing of cattle or sheep anywhere on the Property is not permitted. Notwithstanding the foregoing, a reasonable number of birds, dogs, cats, tortoises or other customary household pets may be kept on a Site ("**Household Pets**"). Permitted Household Pets shall not be kept, bred or maintained for any commercial purpose, nor in unreasonable quantities nor in violation of any other provision of this Master Declaration. Chickens are not deemed Household Pets. No Household Pet shall be permitted to harass any wildlife. The foregoing shall not be deemed to prohibit the stocking of fish for recreational fishing purposes so long as good animal husbandry practices are exercised.

**7.17 Parking.** Members, Business Lessees, Licensees, Invitees and members of the general public shall not park vehicles on the Roadway or along any road within the Property, except in an area specifically designated for parking. The Association shall have the right to remove any vehicle that is parked along the Roadway or along any road within the Property at the vehicle owner's expense.

**7.18 Aircraft.** No aircraft, including helicopters, or aircraft operations of any kind shall be permitted anywhere in or above the Property, except according to applicable Federal Aviation Administration regulations and in areas specifically designated for airfields, landing strips or heliports by Declarant during the Declarant Control Period, or thereafter, by the Association. Nothing in this paragraph shall limit the use of an aircraft in the event of an emergency.

**7.19 Wood Burning Devices.** In addition to any regulations under applicable law, the use of wood burning devices may be regulated or prohibited by the Association or DRB pursuant to its Design Guidelines.

**7.20 Grading; Drainage; Erosion.** Grading for Improvements shall be confined to the minimum necessary to complete Improvements approved by the DRB. Improvements shall be tailored to the Site rather than conforming the Site to the Improvements. All grading shall be contoured into existing ground lines to avoid unnatural sharp edges. Existing natural features, including, but not limited to, trees, shrubs, and rock outcroppings, shall be incorporated into any site plan and shall be preserved rather than removed or altered whenever possible. Reasonable caution shall be taken during any Construction Activity, and thereafter, to prevent erosion, dust and drainage problems. All disturbed soil areas shall be revegetated within a reasonable time in such a fashion as to minimize erosion and dust.

**7.21 No Mining, Drilling, Commercial Logging or Timber Harvesting.** No Site shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing



oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth or for commercial logging or timber harvest. Declarant reserves the right to utilize Sites owned by Declarant for mining, drilling, commercial logging or timber harvest, except where specifically prohibited or restricted by a Supplemental Declaration or Condominium Declaration. Nothing herein shall be interpreted to prohibit a Member from logging their Site for the purpose of thinning for fire protection to meet the intent of the land use restrictions in **Section 7.5** above.

**7.22 Fences and Entry Gates.** Except as specifically provided in a Supplemental Declaration or as placed by the Association in relation to any Special Benefit Area, entry gates, fences, walls or other barriers for the purpose of enclosing or demarcating any Site boundaries or the perimeter of a Building Envelope shall only be permitted with express DRB approval. No fencing shall unreasonably interrupt or interfere with wildlife migration or movement.

**7.23 Cell Towers, Antennas, other Communication Structures, Wind Turbines and Equipment.** Exterior, visible Antennas, wind-driven blades or turbines, or windmills, are not permitted on any Site in the Property except where permitted pursuant to a Supplemental Declaration or Condominium Declaration, where authorized by Declarant, or as authorized in this **Section 7.5**. The Association may place an Antenna on a Facility with the Affirmative Vote of a Majority of the Classes. The Declarant may place an Antenna on the Declarant's owned property in the Declarant's sole discretion. Any Antenna equal to or less than one (1) meter in diameter, that falls within the scope of, or is otherwise covered by the Telecommunications Act of 1995, and the provisions of 47 C.F.R. 1.4000, as may be amended from time to time, or any subsequent federal or state law applicable to common interest communities ("Approved Antenna"), shall be permitted upon any portion of the Property. Installation of any Approved Antenna shall comply with any and all governmental requirements and guidelines, as well as any and all applicable Design Guidelines, including, but not limited to, any preferred placement locations; provided, however, that such Design Guidelines may not unreasonably increase the cost of installing, maintaining, or using the Approved Antenna, unreasonably delay installation of the service, or unreasonably interfere with the quality of reception. Subject to the requirements of applicable law, the DRB may prohibit the installation of any Approved Antenna if the installation, location or maintenance of such Approved Antenna unreasonably affects the safety of Persons, property or for any other safety related reason.

**7.24 Interval Ownership.** Declarant may subject all or any portion of the Property to an Interval Ownership Plan during the Declarant Control Period. Except with regard to Declarant's rights as provided for herein, no Site shall be subjected to an Interval Ownership Plan, without the specific written approval of Declarant during the Declarant Control Period, and, thereafter the Association. Any Site that is subject to an Interval Ownership Plan shall include in its governing documents (*i.e.*, Condominium Declaration, timeshare plan, or fractional plan) the requirement that the members of the board of directors of the association that governs the Interval Owners or a managing agent be appointed to vote on behalf of each of the co-owners on any matters concerning the Association and this Master Declaration, a provision for how co-owners will receive notice from the Association, and a provision for how Assessments will be allocated among co-owners.

**7.25 Health, Safety and Welfare.** In the event additional uses, activities and/or facilities are deemed by the Board to be nuisances or to adversely affect the health, safety or welfare of the Members, Business Lessees, Licensees, Invitees, or members of the general public or the value of any part of the Property, the Association or DRB may adopt Rules and Regulations or Design Guidelines restricting or regulating the same.

**7.26 Interment of Human Remains.** No part of the Property shall be used for the interment of human remains either below or above ground. This provision shall not preclude the possession of cremains by a Person within a Residential Site.

**7.27 Compliance with Law; Hazardous Materials.** No Site shall be used, occupied, altered, changed, improved or repaired except in compliance with all present and future laws, rules, requirements, orders, directions, ordinances and regulations of any local, state or federal governmental or quasi-governmental agency, whatsoever, affecting the Property or the Improvements thereon or any part thereof, and of all their departments, bureaus and officials. Furthermore, no Person shall release, discharge or emit from the Property or dispose of, or allow any Person under such Person's control or direction to release, discharge or emit from the Property or dispose of, any material on, above or under the Property that is designated as a pollutant, hazardous material or containment under any local, state, or federal regulation or ordinance, except in compliance with all applicable law. The Association and the Declarant shall not be obligated to pursue enforcement in the event this Section is violated. The Association and Declarant may notify the applicable governing entity of any alleged violation and may also pursue remedies for the violation of this Master Declaration available to the Association and Declarant for any breach of the provisions of this Master Declaration by a Member or other Person.

**7.28 Subdivision of and Associations for Sites.** Prior to submitting a preliminary or final Plat, Certificate of Survey, covenants including an owner's association or assessment and lien rights, or a Condominium Declaration to any governmental or quasi-governmental entity for review and prior to recording any of the foregoing in the Public Record, the applicant Owner of such Site shall submit copies of the proposed documents to both Declarant and the Association for their separate review and approval. Declarant and Association shall jointly adopt a process for review and approval that may contain deadlines for submittal, review, approval/denial, deposit for attorney's fees and costs that will be incurred by Declarant and/or Association; and notice provisions. This Section shall not apply to properties developed by Declarant or any holder of the relevant Special Declarant Rights. The rights bestowed to Declarant to review and approve such projects and documents under this Section ceases at the end of the Declarant Control Period. Thereafter, the Association shall be the sole reviewing entity under this Section.

**7.29 Aggregation of Sites.** Sites within the same subdivision within the Property may be aggregated by recording an amended Plat pursuant to §76-3-103(16)(b)(ii), MCA, but they may not be aggregated by conveyance pursuant to §76-3-103(16)(b)(i), MCA. Land outside of a platted subdivision within the Property may be aggregated to a Site within a platted subdivision within the Property by recording an amended Plat or Certificate of Survey pursuant to §76-3-103(16)(b)(ii), MCA, but they may not be aggregated by conveyance pursuant to §76-3-

103(16)(b)(i), MCA; however, any land that is aggregated to the Site within the subdivision will remain subject to any Supplemental Declaration for that subdivision. Sites that are part of two different subdivisions and subject to two different Supplemental Declarations within the Property may not be aggregated. Aggregation of two UOA Sites will be in accordance with the UOA Sites' Condominium Declaration. The provisions of this Section shall apply to any amendments of the Montana Subdivision and Platting Act, or similar or replacement acts. Any action permitted pursuant to this **Section 7.29** shall still be subject to the required approvals pursuant to **Section 7.28**, Declarant or Association approval.

**7.30 Handicapped Rights.** Subject to the review rights of the DRB and applicable law, each Owner shall have the right to modify his Improvements and the route over the Site (as applicable and necessary) leading to the entrance of his Improvements, at his sole cost and expense, in order to facilitate access by Persons who are blind, visually handicapped, deaf or physically disabled, or to alter conditions which could be hazardous to such Persons.

**7.31 Temporary Structures.** Unless approved by Declarant during the Declarant Control Period, and thereafter, by the DRB, no tent, shack, trailer or any temporary building or structure shall be placed upon any portion of the Property.

**7.32 Declarant's Exemption.** Notwithstanding any other provision of this Master Declaration, nothing contained in this Article or in **Article 8** shall be construed to prevent the exercise by Declarant of any Special Declarant Rights. Further, Declarant's Construction Activity and Declarant's exercise of any Special Declarant Rights are exempt from review by the DRB during the Declarant Control Period.

**7.33 Violation.** Determination with respect to whether or not a particular activity or occurrence shall constitute a violation of this Article shall be made in accordance with **Article 109**.

## **Article 8 Design Review Board**

**8.1 Purpose.** In order to preserve the natural beauty of the Property and its setting, to maintain the Property as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of the Property, all exterior design, development, Improvements, including, but not limited to, new Improvements and additions, changes or alterations to existing uses or Improvements, and Construction Activity at the Property shall be subject to review by the DRB pursuant to this **Article 8**.

**8.2 DRB.** The DRB is a committee of the Association with authority pursuant to §35-2-433, MCA. There shall be five members of the DRB appointed as follows:

(a) One member of the DRB shall be appointed by the Declarant during the Declarant Control Period or until the Declarant by written statement recorded in the Public Record relinquishes this right, whichever comes first, and thereafter such member shall be

appointed by a majority of the Board and shall be a Member of the Association. Declarant may transfer this appointment right pursuant to **Section 6.8** above.

(b) Two members of the DRB shall be members of the Board, who shall be appointed by the Board to serve on the DRB.

(c) Two *ex officio* members of the DRB shall be professional architects, engineers, planners or other professionals skilled in one or more types of matters that shall come before the DRB, provided, however, that the two *ex officio* members of the DRB pursuant to this **Section 8.2** shall be non-voting members of the DRB but shall count for the purposes of a quorum. These two members shall be appointed by the Declarant during the Declarant Control Period or until the Declarant by written statement recorded in the Public Record relinquishes this right, whichever comes first, and thereafter such two members shall be appointed by a majority of the Board and shall be Members of the Association.

After initial terms, DRB members are to serve staggered three year terms. The first DRB members, including the two *ex officio* members, appointed by the Declarant shall initially serve respective three, four and five year terms. The first set of members appointed by the Board shall initially serve respective one and two year terms. Members of the DRB shall serve until their successors are appointed. Mid-term Board-appointed vacancies shall be filled by the Board, and mid-term Declarant-appointed vacancies shall be appointed by Declarant. Notwithstanding the foregoing, members of the DRB may be removed by the Declarant or Board, in the discretion of the party who appointed the member to the DRB. The *ex officio* members of the DRB may be removed at any time at the pleasure of the Board.

### **8.3 Powers and Duties.**

(a) Except as otherwise provided in **Section 7.32** and this Section, neither the Association, nor any Member, Business Lessee, Licensee, Invitee nor any occupant shall perform the activities described in **Section 7.4** above on the Property, a Site, Facility or a building or structure thereon, or change the use of any Site or building or structure thereon or engage in any Construction Activity unless the DRB has approved the plans and specifications for the project, showing the nature, kind, shape, height, color, materials and location of same, and the construction procedures to be used to ensure compliance with this Article, including compliance with applicable law, the other Governing Documents and any Supplemental Declaration or Condominium Declaration. The DRB has the express authority to review, accept, condition, modify or deny all plans for any of the activities described in this **Section 8.3(a)** to the extent they conflict with the Design Guidelines adopted by the DRB or are not compatible with, or are inappropriate for, the Property.

(b) Design Guidelines adopted by the DRB shall provide reasonable rules and procedures as the DRB deems necessary to carry out its functions, which Design Guidelines shall not be inconsistent with the provisions of the other Governing Documents. Design Guidelines adopted by the DRB shall state the general design theme of all projects in the Property, specific design and construction requirements, and the general construction procedures that will or will

not be allowed in the Property. To recognize or encourage a diversity of character between discrete areas within the Property, the Design Guidelines may be different for different portions of the Property, consistent with the ODP.

(c) Each Member is hereby advised and acknowledges that, in connection with any Construction Activities on his Site, he must comply with the applicable provisions of Supplemental Declarations, Condominium Declarations, Design Guidelines adopted by the DRB, and other Governing Documents, which documents may include, among other things, the following: (a) procedures and fees for making application to the DRB for design review approval, including the documents and materials to be submitted and the process the DRB must utilize to approve or disapprove any submission; (b) time limitations for the completion, within specified periods after approval, of the Improvements for which approval is required under such documents; (c) directions pertaining to the siting of Improvements upon Sites with respect to natural topography, preservation of view corridors and similar criteria; (d) minimum and maximum square foot areas of living space and non-habitable or non-living space that may be developed on any Site; (e) landscaping and irrigation regulations or limitations, and limitations and restrictions prohibiting the removal or requiring the replacement of existing trees, the use of plants indigenous to the locale and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Property; (f) instructions and Design Guidelines for the construction, reconstruction, refinishing or alteration of any Improvement and addressing matters such as grading, transformers, meters, fire protection, loading areas, waste storage, trash and debris removal, parking areas, outside storage, sanitary facilities, and conduct of behavior of builders, sub-contractors and Members' representatives on the Property at any time; and (g) the nature, kind, shape, height, color, materials and location of Improvements, parking, landscaping, open space, signage, skylining, setbacks, utilities, storm water management, grading, erosion control, fencing, interaction with wildlife, fault and landslide areas, air contaminants, water quality, heat, lighting and glare, noise, vibration, electrical disturbances, fire and other hazards, permitted uses within specific areas, the scale of development, maximum floor area and other dimensional limitations, impervious surface, density, construction standards and any other matter regulated pursuant to **Article 7**.

(d) The DRB shall have the authority to establish new Design Guidelines or to enforce existing Design Guidelines in relation to Existing Developments to the extent the DRB is engaged or entitled to perform such functions.

(e) The DRB shall have the authority to retain the services of one or more consulting architects, landscape architects, engineers, contractors and experts, who are independent of the DRB, but are, to the extent required under law, licensed in the State of Montana, to advise and assist the DRB in performing the review functions prescribed in this Article and in carrying out provisions of **Article 7**. Such consultants may be retained to advise the DRB on a single project, on a number of projects, or on a continuing basis. Consultants shall promptly disclose to the DRB their interests in any project or matter before the DRB prior to such project coming up for DRB consideration.

(f) The DRB may, as a condition to any consent or approval, require a Member to enter into a written agreement with the Association containing such covenants, conditions and restrictions as the DRB deems necessary or appropriate, including penalties for failure to comply.

(g) The Association and the DRB through their authorized officers, employees, and/or agents shall have the right to enter any Site upon twenty-four (24) hours notice (or such notice as is appropriate in the event of an emergency) to the Member or Member's agent for the purpose of ascertaining whether such Site or the construction, erection, placement, remodeling or alteration of any Improvement thereon is in compliance with plans or Construction Activity approved by the DRB, the applicable Design Guidelines or the terms of this Master Declaration. The DRB, the Association or such officer, employee, or agent thereof shall not be deemed to have committed a trespass or wrongful act solely by reason of such action or actions under this part. Notice as provided under this Section may be either in person, via telephone, e-mail, or in writing.

(h) The DRB shall have the authority to require reasonable fees to be paid with the filing of plans to offset expenses of the DRB. In addition, the DRB shall have the authority to set and require Members post deposits prior to commencing construction for the purpose of assuring Construction Activities will be completed within the time specified and in compliance with approved plans and applicable requirements. The DRB shall adopt a fee and deposit schedule as part of the Design Guidelines covering what fees and deposits will be required, the format for paying the fees and posting the deposits and how those deposits are used. The DRB reserves the right to establish special fees and deposits in the case of special projects where design review, oversight and enforcement costs may be higher than those established in the fee and deposit schedule.

(i) The DRB shall have the authority to revoke or suspend its approval and/or order the suspension or cessation of any Construction Activity for violation(s) of the Governing Documents or for failure to construct the project in accordance with the approved plans. In addition, the DRB shall have the authority to record a notice of non-compliance in the chain of title for the applicable Site in the Public Record for violations of the Governing Documents.

(j) The DRB shall have the right to issue a certificate of substantial completion certifying that there are no known violations of this Article or applicable Design Guidelines, which certificate shall not constitute a representation, warranty or covenant as to the quality of construction or the compliance with the terms of this Article or applicable Design Guidelines, and shall only serve as an estoppel as to enforcement actions by the DRB for violations of this Article or applicable Design Guidelines for matters covered by the certificate of substantial completion.

(k) The DRB shall have the exclusive right to construe and interpret the pertinent provisions of this Master Declaration as they pertain to the DRB. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the DRB's construction or

interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the provisions hereof.

(l) In addition to the above powers and duties, the DRB may have such powers and duties as delegated to it by the Board.

(m) The DRB may grant exceptions to the Design Guidelines when there is a valid justification, where the exception does not have a negative impact on the adjacent properties or the Property as a whole, and where the exception is reasonable in relation to the overall character and nature of the area, provided, however, that no exceptions can be granted by the DRB as to specific covenants and restrictions set forth in this Master Declaration, and the DRB may adopt specific guidelines in relation to any exception requests. Any application for an exception shall be pursuant to a written request addressing the above criteria and all exception guidelines adopted by the DRB, and any grant or denial of an exception request by the DRB shall be stated in writing, based on written findings.

(n) If a member of the DRB submits a project to the DRB for review or has a personal interest in a submitted project, that DRB member shall recuse himself from the meeting as a voting member of the DRB and participate in the review and discussion of the submitted project.

#### **8.4 Operational Procedures.**

(a) The DRB shall hold meetings as necessary. Meetings of the DRB may be called by Staff, the chair of the DRB or by a majority of the members of the DRB.

(b) A majority of the members of the DRB shall constitute a quorum.

(c) The DRB shall maintain written minutes of its meetings and a record of any votes taken.

(d) All meetings of the DRB shall be open to Members, and all votes of the DRB shall be taken at such meeting. The general public and press may be excluded from meetings of the DRB. Nothing contained herein, however, shall prevent the DRB from meeting in executive session, not open to Members, in relation to personnel matters, litigation in which the Association is or may become involved, matters subject to privileges and confidentiality obligations, and matters relating to the formation of contracts with third parties. Any matter discussed in executive session shall be generally noted in the minutes of the immediately following open meeting. No meeting, regular or special, may be audio taped or video recorded, web streamed over the Internet or broadcast live.

(e) A copy of all minutes, Design Guidelines and policy statements, shall be filed with the records of the Association and shall be maintained by the Association in accordance with its retention and record keeping policies.

(f) The DRB will adopt procedures for soliciting review from a Sub-association or Existing Association when a Member makes application to the DRB for a project that is solely within property governed by that Sub-association or Existing Association.

(g) Approvals and consents of the DRB shall not be arbitrarily and capriciously withheld and actions taken shall not be arbitrary and capricious. DRB decisions shall be conclusive and binding on all interested parties, subject only to the right of appeal detailed below. Any approval or disapproval by the DRB shall be in writing and in the case of a denial shall state the reasons for such denial. Decisions of the DRB are final; however, a Member can appeal in writing to the DRB to reconsider its decision. A request for reconsideration must be made in writing within ten (10) business days of the DRB's decision and be delivered by certified mail to the Association's office. The DRB will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The DRB will then in writing affirm, modify or withdraw its decision within twenty (20) business days after the meeting.

**8.5 Certificate of Substantial Completion.** A Member upon final completion of his Construction Activity, as to his Site, shall request in writing from the DRB a certificate of substantial completion. The DRB will consider the request at a regularly scheduled meeting, for which there is quorum, within forty-five (45) business days from the date the request was received. The DRB will then grant or deny the issuance of the certificate. In the event of denial, the DRB shall state its reasons in writing and provide the Member a reasonable time to address the reasons for denial (*e.g.*, complete the Construction Activity) and reapply for a certificate of substantial completion. The DRB shall not be required to release any deposits held pursuant to this Article, until a certificate of substantial completion has been issued, though the DRB may, in its discretion, reduce or release deposits when all that remains is minor, exterior landscaping work that is prevented from being completed by weather conditions. Construction Activity shall not be deemed to be substantially complete until all exterior finish and landscaping work has been completed, construction equipment and machinery are demobilized, and construction staging materials including, but not limited to, portable toilets, dumpsters and all debris are cleared from the Site.

**8.6 Enforcement.** Prior to completion of construction or action subject to review under this Article, the DRB shall have primary responsibility to enforce the restrictions set forth in **Article 7**, any applicable Design Guidelines, and restrictions as set forth in any Supplemental Declaration or Condominium Declaration for which jurisdiction has been granted to the DRB; provided, however, that such responsibility shall not limit the right of Declarant or the Association to act under **Article 9**.

**8.7 Liability.** The standards and procedures established by this Article or the DRB are intended to enhance the overall aesthetics of the Property and the Moonlight Basin Community. Neither Declarant, the Association, nor the DRB nor any of their respective officers, directors, employees or agents shall be responsible or liable for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental or quasi-governmental entity requirements, nor for



ensuring the appropriateness of soils, drainage, and general site and geotechnical work. A consent or approval or certificate of substantial completion issued by the DRB means only that the DRB believes that the construction, alteration, installation or other work for which the consent, approval or certificate was requested complies with the applicable Design Guidelines. No such consent or approval shall be interpreted to mean that the construction, alteration, installation or other work covered thereby (a) complies with laws, rules, regulations, ordinances or other requirements of any governmental or quasi-governmental authority, or any applicable covenants, conditions or resolutions, (b) is free from defects, errors or omissions, (c) is structurally sound, or (d) lies within the boundaries of a Site or a Building Envelope, and by submitting materials to the DRB for its review, the applicant shall be deemed to have waived all claims against the DRB based on the foregoing disclaimed matters. Neither the Association, the Board, the DRB or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved or disapproved construction on or modifications to any Site within the Property. In all matters where the DRB and its members acted within the scope of their duties, the DRB and its members shall be defended and indemnified by the Association through insurance policies maintained by the Association.

## **Article 9**

### **Enforcement and Remedies**

9.1 **Procedure.** The Association shall have the right (but not the obligation) to enforce the above, through its procedure adopted by resolution of the Board, abatement of the violation by the Association, or by proceedings either at law or in equity against any Person(s) violating or attempting to violate any of the Governing Documents. Legal proceedings may be either to restrain violation of the Governing Documents or to recover damages or both. Such procedures adopted by the Board to enforce the Governing Documents shall include provisions for due process (including but not limited to notice and an opportunity to be heard at a regular meeting of the Board) for Person(s) violating or attempting to violate any of the Governing Documents.

#### **9.2 Discretion.**

(a) The decision to have the Association pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case: (i) the Association's position is not strong enough to justify taking any or further action; (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending Association resources; or (iv) it is not in the Association's best interest, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

(b) Such a decision shall not be deemed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule, nor shall it preclude any

Member from taking action at law or in equity to enforce the Governing Documents, including all such costs and fees for any appeal or enforcement of a judgment.

### **9.3 Costs of Enforcement.**

(a) Costs incurred for enforcing the provisions of the Governing Documents (inclusive of giving notice of the violation), costs of correcting the defect or undoing or curing the violation, if undertaken by the Association, or any fines levied against the Member after the Member is determined by the Board to be in violation of the Governing Documents shall be paid by the Member. Any costs incurred for enforcing the provisions of the Governing Documents, for correcting the defect or undoing the violation, or fine assessed against the Member that is not paid within sixty (60) days will be handled in accordance with **Section 5.6** above.

(b) Should any lawsuit, arbitration or other legal proceeding be instituted by a Member against the Association, or the Association against a Member alleged to have violated one or more of the provisions of the Governing Documents and should the Association be wholly or partially successful in such proceeding, the non-prevailing party shall be obligated to pay all the costs of such proceeding, including reasonable attorney's fees and costs.

**9.4 Delegation.** The Board may delegate any of its obligations with respect to enforcement as set forth above to its appointed agent, Staff or any committee of the Board, including, but not limited to, the DRB; except that any decision to pursue or not pursue any legal proceeding may not be delegated, and shall be determined by the Board.

**9.5 Remedies Cumulative.** Each remedy provided under the Governing Documents is cumulative and not exclusive.

## **Article 10**

### **Special Disclosure Matters; Resort Area; Golf Course Property**

Each Member, Business Lessee, Licensee, Invitee or member of the general public is hereby advised of the following matters affecting the Property and the use and enjoyment thereof:

#### **10.1 Resort Area.**

(a) The Property is or may be located in close proximity to one or more of the Hazard Areas. All of these Hazard Areas create or contain certain hazards associated with the character or use of such Hazard Area. Such Hazard Areas may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

(b) The activities associated with the Resort Area may include, without limitation: (i) vehicular and pedestrian traffic, including, without limitation, (A) Enumerated Transportation Systems that transport skiers and people over, around and through the Resort Area and the Moonlight Basin Community, including, but not limited to, between the base of the

ski area and various parking lots, and (B) construction vehicles and equipment; (ii) activities relating to the construction, operation and maintenance of Enumerated Transportation Systems relating to the Resort Area, including, but limited to, (A) tree cutting and clearing, grading and earth-moving, and other construction activities, (B) construction, operation and maintenance of snowmaking facilities, (C) operation of snow-grooming vehicles and equipment and safety and supervision vehicles, and (D) avalanche control activities; (iii) activities relating to the use of the ski area, including, without limitation, skiing, snow-boarding, dog sledding, hiking, horseback riding, bicycling and other recreational activities and organized events and competitions relating to such activities; and (iv) night time lighting associated with night skiing activities or other activities.

(c) Other hazards created by the Hazard Areas may include, but are not limited to, obstructed views, damage or injury caused by members of the general public, projectiles, attractive nuisances and death, personal injury or property damage caused by wild animals. Substantial construction-related activities relating to the development of the Hazard Areas and the Moonlight Basin Community may cause considerable noise, dust and other inconveniences to the persons residing, visiting or doing business in the Moonlight Basin Community.

(d) Each Owner and Interval Owner, by accepting a deed to a Site or any interest therein, acknowledges that the impacts, disturbances (inclusive of noise and reduction of privacy from use of the Resort Area and other recreational areas), hazards and activities described above may occur in and around such Site and, for itself and for themselves and their Business Lessees, Licensees, Invitees, successors and assigns, hereby forever waive and release any claims which such parties may have against the Association, Declarant, the owner(s) and operator(s) of the Resort Area, and/or their respective employees, officers, directors, successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described in this **Section 10.1**.

(e) The provisions of this **Section 10.1** may not be amended without the consent of the owner of the Mountain Facility and the Affirmative Vote of a Majority of the Classes.

#### **10.2 Golf Course Hazards.**

(a) Some Sites are or may be located in close proximity to a Golf Course Property. This area may create or contain certain hazards associated with the character or use of such area. Such area may also generate an unpredictable amount of visible, audible and odorous impacts and disturbances from activities relating to the construction, operation, use and maintenance thereof.

(b) The activities associated with a Golf Course Property may include, without limitation: (i) construction of a Golf Course Property, including, without limitation: (A) future construction of the golf course and golf course improvements (including, but not limited to, tees, fairways, bunkers, rough area, cart paths, signage, driving range, chipping and putting

areas, and ball-washing machines), permanent clubhouse, ski trails (alpine and Nordic), ski lifts, golf maintenance shop, restrooms, and all associated structures, and **(B)** any remodel, reconstruction or expansion of the existing golf course, trails, and structures; **(ii)** use of a Golf Course Property, including, without limitation: **(A)** people golfing, skiing (alpine and Nordic), snow shoeing, dog sledding, horseback riding, hiking, walking, running, fishing, biking, sleigh and wagon rides and other recreational activities, **(B)** tournaments, weddings, and events, and **(C)** typical golf course play, including every act necessary and proper to the playing of golf (including, but not limited to, the placement and maintenance of "out-of-bounds" signs or markers, play of golf balls, retrieval of golf balls, the flight of golf balls over and upon Sites, the usual and common noise level created by the playing of the game of golf and the operation of equipment incident thereto, and all other common and usual activity associated with playing the game of golf and operating and maintaining the Golf Course Property); **(iii)** maintenance of a Golf Course Property, including, without limitation: **(A)** snow removal from greens, tees and cart paths, **(B)** mowing the golf course, including mowing around sunrise or sunset, **(C)** irrigation of the golf course with water or treated waste water which can take place in the late evening to sunrise, **(D)** application of pesticides or fungicides to the golf course through spray application, **(E)** application of fertilizer to the golf course either through boom sprayers, fertigation, or granular application, **(F)** maintenance of all golf course improvements, **(G)** maintenance of equipment used in Golf Course Property maintenance, **(H)** installation or removal of trees or other vegetation on a Golf Course Property, **(I)** maintenance of cart paths, and **(J)** maintenance of ski trails (alpine and Nordic); and **(iv)** game management, including, without limitation: **(A)** constructing temporary fencing (inclusive of electric) for the protection and establishment of tees, greens, and fairways, **(B)** removal and disposal of dead game, **(C)** game management as necessary for the health, safety, welfare of the users of a Golf Course Property or as determined by State of Montana, Department of Fish, Wildlife and Parks.

**(c)** The above activities may involve the use of vehicles or equipment, including, but not limited to, trucks, cars, golf carts, snowmobiles, snow grooming vehicles, mowers, sweepers, power sprayers, skid steers, snow blowers, tractors, boom sprayers, and ATVs. Use and maintenance of a Golf Course Property is year round.

**(d)** Declarant hereby reserves for itself and any successor owner of the Golf Course Property, and its and their Business Lessees, Licensees, Invitees, successors and assigns a perpetual easement on, over, upon, across, above, under and through the Property as may be reasonably necessary for:

**(i)** retrieval of golf balls that are visible from the fairway, including the right to enter upon the Property and any Site created thereon, to accomplish such retrieval. Golf balls lying in the Property can only be picked up and returned to the fairway, and may not be hit out of the Property. Declarant may construct, or lot owners may be allowed to construct, subject to DRB approval, fences along portions of the common boundary between the Golf Course Property and the Property. Gaps shall be provided in any such fences for ball retrieval purposes. Persons retrieving golf balls from private property within the Property shall behave in a courteous and respectful manner, shall cause no noise or other disturbances or nuisances, and shall be liable for any damages or injuries that may result from their entry upon the Property.

Notwithstanding the foregoing, no entry shall be allowed into, and no golf balls may be retrieved from, any internal portion of a Site that is enclosed by a privacy fence or other landscaping barrier, and a sign indicating "No Ball Retrieval Beyond This Point" may be located on such privacy fence or barrier to the extent such barrier has been approved by the DRB; and

(ii) flight of golf balls over, across, and upon the Property;

(iii) doing of every act necessary and incident to the playing of golf and other recreational activities on a Golf Course Property and maintenance, use and operation of a golf course and all of the activities set forth in **Section 10.2(b)** above.

(e) Each Owner and Interval Owner, by accepting a deed to a Site or any interest therein, acknowledges that the impacts, disturbances (including, but not limited to, noise and reduction of privacy from pedestrian or vehicular traffic on any golf course), hazards and activities described above may occur in and around such Site and the Property and, for itself and for themselves and their Business Lessees, Licensees, Invitees, successors and assigns, hereby forever waive and release any claims which such parties may have against the Association, Declarant, the owners and operators of a Golf Course Property, and/or their respective employees, officers, directors, successors and assigns, as a result of, arising out of or in any way relating to the impacts, disturbances, hazards and activities described in this **Section 10.2**.

**10.3 Geotechnical.** The Property is located in mountainous terrain and due to variable surface and subsurface conditions found in mountainous terrain, Members are on notice that they should or may be required to obtain a site specific geotechnical analysis of such conditions prior to the construction of any Improvement, to ensure that the design of the Improvement is appropriate for the Site. Geotechnical hazards and risks include, but are not limited to, landslides, earthquakes, abnormally high water tables, soil instability and potentially more extensive engineering and construction requirements in order to limit the destabilizing potential of any particular Site. All Members shall verify what is required of them with regard to conducting a site specific geotechnical analysis by checking the Plat or Certificate of Survey for their Site and/or their Supplemental Declarations, and all other requirements of law or best practices for engineering and construction. Regardless of whether any requirements or recommendation for site specific geotechnical analysis is or is not made, it is the Member's sole responsibility to obtain all required analyses for their Site and provide all required engineering and construction for their Site.

**10.4 Wetlands and Waterways.** Some Sites within the Property may contain streams, rivers, creeks, water courses and/or wetlands (collectively called "water features"). It is the Member's responsibility to ensure that any Construction Activity done on the Site is in compliance with all applicable local, state and federal rules and regulations in addition to any land use restrictions pursuant to **Article 7** or any applicable Design Guidelines regarding water features.

**10.5 Security Checkpoint.** Members, Business Lessees, Licensees, Invitees and members of the general public acknowledge that they and their Invitees may pass a security

checkpoint at the entrance of the Property and the Moonlight Basin Community and that they may be required to provide requested identification and information. However, the fact that this security checkpoint may exist does not obligate Declarant or impose a duty on Declarant to provide security services or ensure the safety and wellbeing of any Member or Invitee.

10.6 **Zoning.** Members, Business Lessees, Licensees, Invitees and members of the general public acknowledge that all or a portion of the Property may be included in a zoning district that is adopted pursuant to public petition or adopted by the Board of Madison County Commissioners.

## **Article 11**

### **Insurance, Casualty and Condemnation**

#### **11.1 Insurance.**

(a) **Required Coverages.** That Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering “risks of direct physical loss” on a “special form” basis (or comparable coverage by whatever name determined) for all insurable improvements on Facilities to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Facilities, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employer’s liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined by the Board’s business judgment but not less than an amount equal to one-sixth of the annual income of the Association plus reserves on hand, or such lesser amount as is commercially reasonably

obtainable. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

(b) **Policy Requirements.** From time to time, the Association shall arrange for a review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of who must be familiar with insurable replacement costs in Big Sky, Madison County, Montana. The policies may contain a reasonable deductible (the determination of "reasonable" including all reserves maintained by the Association) and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 11.1(a)**. In the event of an insured loss, the deductible shall be treated as an Association Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines that the loss is the result of the negligence or willful misconduct of one or more Members, Business Lessee, Licensee, or Invitee, then the Board may assess the full amount of such deductible against such Member and their Site (as applicable) as a default assessment.

All insurance coverage obtained by the Board shall (if reasonably available):

- (i) Be written with a company authorized to do business in Montana;
- (ii) Be written in the name of the Association as trustee for the benefited parties. Policies on Facilities shall be for the benefit of the Association and its Members;
- (iii) Not be brought into contribution with insurance purchased by Owners, occupants or their mortgagees individually;
- (iv) Contain an inflation guard endorsement;
- (v) Include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) Provide that each Member is an insured person under the policy with respect to liability arising out of such Member's interest as a member of the Association in the Facilities (provided, this provision shall not be construed as giving a Member any interest in the Facilities other than that of a Member);
- (vii) Include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Members, or on account of any curable defect or violation of any Member without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(viii) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting with the scope of its authority on behalf of the Association.

(c) **Waiver of Subrogation and Endorsements.** In addition the Board, shall use reasonable efforts to secure insurance policies which name the Members, collectively, as additional insureds for claims arising in connection with the ownership, existence, use or management of the Facilities and provide:

(i) A waiver of subrogation as to any claims against the Association's Board, Staff, officers, and any manager, the Members and their Business Lessee, Licensees, and Invitees;

(ii) A waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) An endorsement excluding Member's individual policies from consideration under any "other insurance" clause;

(iv) An endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) A cross-liability endorsement that provides cross-liability coverage; and

(vi) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no mortgagee having any interest in such losses may be prohibited from participating in the settlement negotiations, if any related to the loss.

## 11.2 Casualty.

(a) In the event of damage or destruction to any part of the Facilities due to fire or other adversity or disaster, any insurance proceeds shall be collected by and paid to the Association and such insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such damage or destruction are insufficient to repair and reconstruct the damaged or destroyed Facilities, as applicable, or if there are no insurance proceeds, the Board shall levy a Special Assessment pursuant to the Governing Documents in the aggregate amount of such deficiency and shall proceed to make such repairs or reconstruction. Notwithstanding the foregoing, the Association shall have no obligation to repair or reconstruct the damaged or destroyed Facilities if such repair or reconstruction would be illegal under any local or state statute or ordinance governing health or safety or if within sixty (60) days after such damage or destruction Members representing eighty (80%) percent of the votes of each of the Classes of Members in the Association who are directly or indirectly affected by the casualty elect not to rebuild. The Special Assessment provided for herein shall be a debt of each Member, and may



be enforced and collected in the same manner as any assessment lien provided for in the Governing Documents. If Members representing eighty (80%) percent of the votes of the combined Classes of Members in the Association elect not to rebuild any damage or destruction to the Facilities in accordance with the terms and provisions set forth above, the Association shall demolish any destroyed or damaged improvements, remove all debris and rubble caused by such demolition and return the damaged or destroyed area to a slightly condition and shall have the right to levy against and collect from the Members a Special Assessment for this limited purpose, if necessary.

(b) Subject to the terms of any Supplemental Declaration or Condominium Declaration, in the event of damage or destruction of the improvements located on any Site or any part thereof (other than any Facilities which is governed by **Section 11.2(a)**) due to fire or other adversity or disaster, the Owner or Interval Owners in relation to such Site shall, at its or their sole cost and expense, with due diligence, either (i) cause the damaged or destroyed improvements to be repaired and restored to a condition comparable to that prior to the damage or destruction, or (ii) demolish the destroyed or damaged improvements, in which event the damaged or destroyed improvements shall forthwith be demolished and all debris and rubble cause by such demolition shall be removed and the affected Site regarded and landscaped. If such repair or restoration or such demolition, debris removal, regarding and landscaping is not commenced within one hundred eighty (180) days from the date of such damage or destruction, or if the same is commenced but then abandoned for a period of more than ninety (90) days, the Association may initiate proceedings under **Article 9**, inclusive of fining the Owner or Interval Owners until such repair or restoration or such demolition, debris removal, grading and landscaping is commenced or re-commenced, as the case may be, unless the Owner or Interval Owners can prove to the satisfaction of the Board that such failure is due to circumstances beyond the Owner's or Interval Owners' control. All Construction Activity commenced under this **Section 11.2(b)** shall be subject to DRB review and approval, which will not be unreasonably withheld.

(c) In the event of damage or destruction to any part of a Special Benefits Area due to fire or other adversity or disaster, the casualty shall be handled in the same manner as detailed in **Section 11.2 (a)** above, but that only those Members whose Sites are included in the Special Benefits Area are entitled to vote and are subject to any Special Assessment as applicable.

### **11.3 Condemnation.**

(a) In the event the Facilities, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), each Member will be entitled to notice thereof, but the Association will act as attorney-in-fact for all Members in the proceedings incident to the taking unless otherwise prohibited by law. The award for such taking will be payable to the Association as trustee for all of the Members to be disbursed as follows:

(i) If the taking involves a portion of the Facilities on which improvements have been constructed, then, unless restoration or replacement of such improvements would be illegal under any state or local statute or ordinance governing health or safety or unless within sixty (60) days after such taking Members representing eighty (80%) percent of the votes of each of the Classes of Members in the Association who are directly or indirectly affected by the taking elect not to rebuild elect not to restore or replace such improvements, the Association, by majority vote of the Board, may at its option, restore or replace such improvements so taken on the remaining land included in the Facilities to the extent lands are available therefore, in accordance with plans approved by the Board, the DRB and other governmental or quasi-governmental entity having jurisdiction over the Property. If such improvements are to be restored or replaced, and the award for the taking is insufficient to restore or replace such improvements, the Board shall levy a Special Assessment in the aggregate amount of such deficiency and shall proceed to restore or replace such improvements.

(ii) If the taking does not involve any improvements, or if there is a decision made not to restore or replace as set forth above, or if there are net funds remaining after any such restoration or replacement of improvements is completed, then the Association shall retain such excess proceeds and place them in the Association's reserve account.

(b) In the event any Site or any portion thereof (other than any Facility which is governed by **Section 11.3(a)**) shall be taken, the condemnation award for such taking shall be paid solely to the Owner of such Site. The repair or restoration of any improvements located on such Site which are affected by the taking shall be completed as if it were a casualty, in accordance with the terms of **Section 11.2(b)**. If an entire Site shall be condemned, the Owner thereof shall automatically cease to be a Member of the Association, but obligations arising prior to such taking shall remain the obligation of such Person regardless of the termination of Membership.

(c) In the event a Special Benefits Area, or any portion thereof, shall be taken for any public or quasi-public use, under any statute, by right of eminent domain or by purchase in lieu thereof (herein, a "taking"), the condemnation shall be handled in the same manner as detailed in **Section 11.3 (a)** above, but that only those Members whose Sites are included in the Special Benefits Area are entitled to notice and the right to vote and are subject to any Special Assessment as applicable.

## **Article 12**

### **Mortgagee Provisions**

#### **12.1 Notices of Action.**

(a) An institutional holder, insurer, or guarantor of a first mortgage which provides a written request as specified herein to the Association's registered agent, thereby becoming an "**Eligible Holder**" will be entitled to written notice of:

(i) Any condemnation loss or any casualty loss of which the Association has notice which affects a material portion of the Property or which affects any Site on which there is a first mortgage held, insured, or guaranteed by such Eligible Holder;

(ii) At least thirty (30) days prior to any foreclosure by the Association of a lien, a delinquency in the payment of any Assessment, charge, fine, penalty or other amount payable by a Member subject to the mortgage of such Eligible Holder; or

(iii) Any lapse, cancellation, or material modifications of any insurance policy maintained by the Association.

(b) The written request as required under this Section shall clearly state the legal description and address of the Site and the Association account number to which the mortgage relates, as well as, the name, mailing address, telephone number and e-mail address of the person who should receive the notices for the above listed actions. It is the sole obligation of the Eligible Holder to keep this information up to date with the Association and provide notice as provided herein to the Association when this information changes. The Association will not be in default for failure to provide the above listed notices if the Eligible Holders does not provide the Association with accurate information.

(c) Any written notice required under this Section to be provided by the Association to an Eligible Holder shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by certified mail, first-class postage pre-paid, return receipt requested to the address provided by the Eligible Holder.

**12.2 Payment of Unpaid Assessment.** Any mortgagee or other lienholder holding a lien on a Site may pay any unpaid Assessment with respect to such Site, together with any and all costs and expenses incurred with respect to the Assessment lien securing such unpaid Assessment.

### **Article 13**

#### **Jurisdiction, Annexation and Withdrawal**

**13.1 Existing Jurisdiction.** The Property within the existing jurisdiction of the Association and subject to this Master Declaration and the Governing Documents is described in **Exhibit A** attached to this Master Declaration and incorporated herein by reference. Property within the jurisdiction of the Association and subject to this Master Declaration is subject to all provisions of the Governing Documents. Pursuant to the provisions of this **Article 13**, the Annexable Area and other real property may be subjected to the jurisdiction of the Association and become part of the Property subject to this Master Declaration.

#### **13.2 Expansion of Jurisdiction by Declarant.**

(a) During the Declarant Control Period, the jurisdiction of the Association and the Property subject to this Master Declaration may be expanded by annexation of other real property from the Annexable Area, immediately adjacent to the Property or property within the

Moonlight Basin Community, whether or not adjacent, at the discretion of Declarant. Such annexation shall be accomplished by recording a supplement to **Exhibit A** in the Public Record describing the property being annexed, stating the authority for expansion, stating that the property is subject to this Master Declaration, and signed by Declarant and the owner of the real property being annexed. Such supplement shall not be deemed an amendment to this Master Declaration. To the extent required by law, the Overall Development Plan may need to be amended to incorporate any such annexed property. Notwithstanding any other term herein, in relation to the annexation of Existing Developments, the Declarant may modify the provisions of this Master Declaration in relation to applicable types of Assessments, applicable Assessment rates and amounts, solely as they apply to Existing Development being annexed on an ongoing basis, in the Declarant's sole discretion, any such modifications to be set forth in the supplement to **Exhibit A** and a Supplemental Declaration, which Supplemental Declaration shall apply to such Existing Development regardless of any other term of this Master Declaration.

(b) Any such annexation shall be effective upon the recording of such supplement, unless otherwise provided therein. Upon annexation the owner or owners of the annexed property shall become a Member in the Association, will be subject to the Governing Documents and entitled to the rights and obligations of the members as set forth in the Governing Documents.

(c) Nothing in this Master Declaration shall be construed to require Declarant or any successor to subject additional property to this Master Declaration or to develop any of the property whatsoever.

### **13.3 Expansion of Jurisdiction by the Association.**

(a) After the Declarant Control Period, the jurisdiction of the Association and the Property subject to this Master Declaration may be expanded by annexation of other real property from the Annexable Area or from property immediately adjacent to the property described in **Exhibit A**, subject to the Affirmative Vote of a Majority of the Classes. Such annexation shall be accomplished by recording in the Public Record, a supplement to **Exhibit A** describing the property being annexed, stating the results of the vote taken, and signed by the Association and the owner of the real property being annexed. Such supplement shall not be deemed an amendment to the Master Declaration. To the extent required by law, the Overall Development Plan may need to be amended to incorporate any such annexed property.

(b) Any such annexation shall be effective upon the recording of such supplement, unless otherwise provided therein. Upon annexation the owner of the annexed property shall become a Member in the Association, will be subject to the Governing Documents and entitled to the rights and obligations of the Members as set forth in the Governing Documents. The Association, in its sole discretion, may impose a fee to be paid by the owner of the annexed property to defray any costs of annexation.

(c) Nothing herein shall be construed to require the Association to annex or develop any property whatsoever.

#### **13.4 Withdrawal from Jurisdiction.**

(a) Declarant, during the Declarant Control Period, reserves the right to amend this Master Declaration without prior notice and without the consent of any Person, for the purpose of removing property then owned by Declarant, its affiliates, or the Association from the coverage of this Master Declaration, to the extent originally included in error or as a result of any changes in Declarant's plans for the Property provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development of the Property contemplated under the Overall Development Plan. The Association with the consent of the Declarant, during the Declarant Control Period may also amend this Master Declaration without prior notice and without the consent of any other Person, for the purpose of removing property then owned by the Association or Owners who have consented to the removal from the coverage of this Master Declaration, to the extent originally included in error. Such withdrawal shall be accomplished by recording in the Public Record a supplement to **Exhibit A** describing the property being withdrawn and shall restate the Property subject to this Master Declaration, stating the authority for withdrawal, and signed by Declarant or the Association, as the case may be. In the event the property to be withdrawn is a Facility, then the Association must consent to and sign the supplement. Such supplement shall not be deemed an amendment to the Master Declaration.

(b) Prior to any withdrawal, all applicable Assessments that are owed to the Association must be paid or waived by the Association. Any such withdrawal shall be effective upon the recording of such supplement, unless otherwise provided therein.

(c) This right of withdrawal during the Declarant Control Period is specifically reserved to Declarant and thereafter reserved to the Association.

### **Article 14 Miscellaneous**

**14.1 Duration of Master Declaration.** The covenants, conditions, restrictions, reservations, easements, assessments, charges and liens set forth in this Master Declaration shall run with and bind the Property in perpetuity unless terminated in accordance with the terms of this Master Declaration. In the event this Master Declaration or any provision hereof is found to be subject to the Rule Against Perpetuities or similar legal doctrine, this Master Declaration or provision shall be deemed to run for a period of twenty (20) years from the date of recordation of this Master Declaration, after which it shall be automatically extended for successive ten (10) year periods, unless at least one year prior to the expiration of the initial term or any such ten (10) year period of extended duration, this Master Declaration is terminated by a termination agreement that has been authorized and executed by all of the following: (i) the Class B Member during the Declarant Control Period, (ii) at least eighty percent (80%) of the votes of each of Classes of Members in the Association (other than the Class B Member), acting as Classes, which agreement is recorded in the Public Record, and (iii) the owner of the Mountain Facility and Golf Course Property.

#### **14.2 Amendment.**

(a) **By Declarant.** For a period of fifteen (15) years from the date this Master Declaration is recorded in the Public Record, Declarant may unilaterally amend this Master Declaration for any purpose, provided the amendment has no material adverse effect on the right of any Owner or Interval Owner. Notwithstanding the above, during the Declarant Control Period, Declarant may unilaterally amend this Master Declaration if such amendment is (i) necessary to bring any provision in compliance with any applicable governmental statutes, necessary governmental registrations, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Sites; (iii) required by a Federal Mortgage Underwriter, to enable such Federal Mortgage Underwriter to make or purchase mortgage loans on the Sites; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Sites; (v) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental entity; or (vi) necessary to develop in accordance with the Overall Development Plan. However, any such amendment shall not materially adversely affect the rights or materially increase the obligations of any Owner or Interval Owners as to any Site unless the Owner or Interval Owners (or the applicable Interval Owner association or manager) of such Site shall consent thereto in writing.

(b) **By Members.** Any provision contained in this Master Declaration may be amended, abandoned, terminated, modified or supplemented at any time by the written consent or certification thereof, signed by the Chairman of the Association and attested to by the Secretary, duly recorded in the Public Record, by an Affirmative Vote of a Majority of the Classes. However, (i) during the Declarant Control Period, the consent of the Declarant must be obtained, and (ii) any such amendment shall not materially adversely affect the rights or materially increase the obligations of any Owner or Interval Owner as to any Site unless the Owner or Interval Owner of such Site shall consent thereto in writing. Proposed amendments can be drafted and put to a vote of the Members either by the Board or any Member.

**14.3 Effect of Provisions of Master Declaration.** Each provision of this Master Declaration, and any agreement, promise, covenants and undertaking to comply with each provision of this Master Declaration, and any necessary exception or reservation or grant of title, estate, right or interest to effectuate all easements, grants, and conveyances herein and all other provisions of this Master Declaration shall be deemed incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument.

**14.4 Interpretation of the Master Declaration.** The Association by and through its Board, shall have the exclusive right to construe and interpret the provisions of this Master Declaration, except for provisions expressly delegated to the DRB. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Board's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and the provisions hereof.

**14.5 Attorney's Fees.** In the event suit or action is instituted for a declaration of rights hereunder or to enforce any of the provisions of this Master Declaration, the parties agree to pay to the prevailing party all reasonable costs, fees, and attorney's fees (as calculated on an hourly

fee basis and not a contingency fee basis) and all costs of collection and enforcement, including, but not limited to, any appeals.

**14.6 Limited Liability.** Neither Declarant, the Association, the DRB, or the Board nor any member, agent or employee of any of the same shall be liable to any party for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Such parties shall additionally be entitled to indemnification to the extent required under applicable law or any Governing Document.

**14.7 Disclaimer of Representations.** Anything to the contrary in this Master Declaration notwithstanding, and except as otherwise may expressly be set forth on a Plat or other instrument recorded in the Public Record, Declarant makes no, and disclaims any and all, warranties or representations whatsoever that the Overall Development Plan (as presently envisioned or as amended in the future) for the development of the Property can or will be carried out or that any real property now owned or hereafter acquired by Declarant is or will be subjected to this Master Declaration, or that any such land, whether or not it has been subjected to this Master Declaration, is or will be committed to or developed for a particular use, or that if such real property is once used for a particular use, that such use will continue in effect. No assurances are made regarding the preservation of views from any Site or configuration, location, Site type or other aspect of the development in the vicinity of any Site.

**14.8 Use of Trademark.** Each Owner and Interval Owner, on behalf of themselves and their Business Lessees, Licensee and Invitees, by acceptance of a deed for his Site, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to acknowledge that "Moonlight Basin," "Moonlight Basin Ranch," "Ski Moonlight," "The Reserve at Moonlight Basin," "Moonlight," "Genuine Montana," and the "Tree Moon" logo, and all future similar and derivative marks, designs and logos are service marks and trademarks of MB MT Acquisition LLC (such entity, or any assignee as to such names with the United States Patent and Trademark Office, the "**Mark Holder**") and to covenant that he shall not use the same without the prior written permission of the Mark Holder or its licensees.

**14.9 Successors and Assigns.** Except as otherwise provided herein, this Master Declaration shall inure to the benefit of Declarant, the Association, and each Member and shall be binding upon Declarant, the Association, each Member and any person or entity holding any interest in or operating on or using the Property, and their respective heirs, devisees, personal representatives, successors and assigns.

**14.10 Severability.** A determination of invalidity of any one or more of the provisions or conditions hereof by judgment, order or decree of a court shall not affect in any manner the other provisions hereof which shall remain in full force and effect.

**14.11 Captions.** The captions and headings in this Master Declaration are for convenience only and shall not be considered in construing any provisions of this Master Declaration.

14.12 **Gender.** The use of the masculine gender in this Master Declaration shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and *vice versa*, whenever the context so requires.

14.13 **No Waiver.** Failure to enforce any provisions of this Master Declaration shall not operate as a waiver of any such provision or of any other provision of this Master Declaration.

14.14 **Evidence of Membership and Registration of Mailing Address.** Any Person on becoming a Member shall furnish to the Association a copy of the recorded instrument, lease or sublease, vesting that Person with the interest required to make him a Member of the Association. Each such Member at the same time shall give a single name and address to which notices to such Member may be sent, as well as, an e-mail and telephone number by which that person can be contacted. The Member shall state in such notice the Class of Membership to which he believes he is entitled, the number of votes to which he believes he is entitled and the basis for such determinations. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member shall give a new written notice to the Association containing all the information required to be contained in the original notice. As against any Member, and any Person claiming by, through, or under such member, the Association may, but shall not be obligated to, rely, for any and all purposes, on the information reflected in the most recent written notice furnished with respect to such Member. The Association shall keep and preserve the most recent written notice received by the Association with respect to such Member. In no event will the Association have any obligation to investigate into the address or contact information of any Member.

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IN WITNESS WHEREOF Declarant has executed this Master Declaration on the day and year first written above.

**DECLARANT**

[\_\_\_\_\_] ,  
a Delaware limited liability company

[NOTARY BLOCK]

The owner of the Mountain Facility has signed this Master Declaration for the sole purpose of agreeing to the provisions of **Section \_\_\_\_**.

**OWNER OF MOUNTAIN FACILITY**

[Signature and Notary Block]

The owner of the Golf Course Property has signed this Master Declaration for the sole purpose of agreeing to the provisions of **Section \_\_\_\_**.

**OWNER OF GOLF CCOURSE PROPERTY**

[Signature and Notary Block]

**Exhibit A**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**

**LEGAL DESCRIPTION OF THE PROPERTY**

**Exhibit B**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**  
**MOUNTAIN FACILITY**

**Exhibit C**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**  
**CLASSES OF MEMBERSHIP**

There shall be two (2) initial Classes of Members in the Association, as set forth below, subject to the addition of a third class of members, the "Business Class." . The Classes of Members shall be as set forth below. A Member may belong to more than one Class.

**Class A.** Class A Members shall be (i) all of the Owners of Residential Sites, inclusive of Owners who operate a Bed and Breakfast on their Residential Site, and (ii) all of the Interval Owners of Sites that are Residential Sites. A Class A Member who owns fee simple title to a Residential Site shall be entitled to one vote for each Residential Site owned by such Class A Member. In the event a Residential Site has been subject to an Interval Ownership Plan the one vote allocated to the Residential Site shall be voted by the members of the board of directors of the owners association for the Interval Ownership Plan or managing agent for that Interval Ownership Plan. In the event that numerous, separate residences subjected to an Interval Ownership Plan are part of a single parcel on a Plat, then each separate residence shall have a vote, which shall be voted by the members of the board of directors of the owners association for the Interval Ownership Plan or managing agent for that Interval Ownership Plan.

**Class B.** The Declarant shall constitute the entire Class B Membership as the Declarant Special Member. The Class B member shall be entitled to one vote. The Class B member may at any time give the Association notice that it wishes to resign as a member, which notice shall be accompanied by the written resignations of all Class B directors, in which case the Board shall be reduced by the number of directors the Class B member was then entitled to elect, until those vacancies can be filled in accordance with the election of at large directors as detailed below and the Class B member shall have no further rights or obligations hereunder.

At any time during the Declarant Control Period, the Declarant may amend, it its sole discretion, from time to time, **Exhibit \_\_\_\_** and add a third membership class, the Business Class and the consent of no other party shall be required.

**Exhibit D**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**  
**GOLF COURSE PROPERTY**

**Exhibit E**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**  
**ASSESSMENTS**

**Article 1**  
**Types of Assessments**

**1.1 Common Assessments.**

(a) **Notices.** Notices of Common Assessment levies shall be sent to the addresses on file with the Board for Owners and any association or managing agent for a Site that is subject to an Interval Ownership Plan, or in the absence of an address on-file with the Board, the publicly available address for such Persons on file with the Madison County Treasurer. Such notices shall set forth the Assessed Value, the Common Assessment Total, the Assessed Value Ratio, and the Common Assessment relative to each Site owned by such Owner. Payment of each Common Assessment shall become due and payable as set forth by the Board in the notice of assessment.

(c) **Exemption.** The Board may provide for a process by resolution of the Board, whereby it can grant an exemption to an Owner for the payment of the Common Assessment. Such procedures adopted by the Board shall include evaluation criteria for exemption such as if the Owner is a governmental or quasi-governmental entity, a public or private utility company, or a non-profit organization which is tax-exempt under the provisions of Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code; time for when the application should be made; and a process for application for exemption. Any exemption granted by the Board shall only be for that fiscal year and the Owner shall reapply for exemption each fiscal year.

**1.2 Community Transfer Assessment.**

(a) **Obligation at Transfer.** Every Transferor shall pay to the Association in conjunction with the making of a Transfer, a “**Community Transfer Assessment**” equal to the Fair Market Value for the Site multiplied by one percent (1%). Such Community Transfer Assessment rate may not be changed without the Affirmative Vote of a Majority of Classes at a meeting duly called for such purpose upon written notice which sets forth the purpose of the meeting and is sent to all Members at least thirty (30) days in advance.

(b) **Definitions.** For the purposes of this Exhibit, the following terms are defined as set forth below.



(i) **Consideration.** Consideration means and includes the total of money paid and the Fair Market Value of any property delivered, or contracted to be paid or delivered, in return for the Transfer of any Site, and includes the amount of any note, contract indebtedness, or rental payment assumed, deemed forgiven or received in connection with such transfer, whether or not secured by any lien, mortgage, or other encumbrance, given to secure the Transfer price, or any part thereof, or remaining unpaid on the property at the time of Transfer. The term "Consideration" does not include the amount of any outstanding lien or encumbrance for taxes, special benefits or improvements, in favor of the United States, the State of Montana, or a municipal or quasi-municipal governmental corporation or district.

(ii) **Entity.** Entity means corporation, partnership, limited liability company, association, or any other legal entity, but does not include any of the foregoing serving in a trustee capacity or any natural person, whether serving in his individual or trustee capacity.

(iii) **Fair Market Value.** Fair Market Value means the greater of: (i) the Consideration given by the Transferee to the Transferor in exchange for the Transfer of a Site or a Interval Owner's interest in a Site, or (ii) the price that a Transferee would pay to a Transferor for a Site or an Interval Owner's interest in a Site in a bona fide arms' length Transfer between unrelated Persons, as determined by the Board.

(iv) **Transfer.** Transfer means, whether in one transaction or in a series of related transactions, any conveyance, assignment or other transfer of beneficial ownership of any Site, including but not limited to (1) the conveyance of fee simple title to any Site, (2) the transfer of more than fifty percent (50%) of the outstanding shares of the voting or control equity interests of an Entity, which, directly or indirectly, owns one or more Sites, and (3) the transfer of more than fifty percent (50%) of the interest in net profits, net losses, or net cash distribution rights of any Entity which, directly or indirectly, owns one or more Sites, but "Transfer" shall not mean or include the transfers exempted under **Section 1.3(c)** below.

(v) **Transferee.** Transferee (i.e., "buyer") means and includes all parties to whom any interest passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferor under this Section.

(vi) **Transferor.** Transferor (i.e., "seller") means and includes all parties to whom any interest passed from a Transfer, and each party included in the term "Transferor" shall have joint and several liability for all obligations of the Transferee under this Section.

(c) **Exemptions.** The Board shall adopt a resolution which states which Transfers may be exempt from payment of the Community Transfer Assessment and provides for a process by which a Transferor may apply for a determination of the Board to evaluate and determine whether a Transfer is subject to payment of the Community Transfer Assessment.

(d) **Payment and Reports.** The Community Transfer Assessment shall be due and payable by the Transferor to the Association at the time of the Transfer giving rise to such Community Transfer Assessment. With such payment, the Transferee shall make a written report to the Association on forms prescribed by the Association, fully describing the Transfer, the names of the parties thereto, the legal description of the Site transferred, and such other information as the Association may reasonably require.

**1.4 Default Assessment.** Notwithstanding anything to the contrary contained herein, if any expense of the Association is caused by (a) the negligence or misconduct of a Member or a Member's family member, employee, agent, Business Lessee, Licensee or Invitee, or (b) a violation of any covenant or condition of a Governing Document, by a Member or a Member's family member, employee, agent, Business Lessee, Licensee or Invitee, the Association may, if it deems necessary or advisable, levy an assessment against such Member. Any such assessment levied by the Association, and each fine, penalty, fee, or other charge imposed upon a Member for the Member's violation of any covenant or condition of any Governing Document, are each referred to herein as a "**Default Assessment.**"

**1.5 Special Assessment.** The Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Such Special Assessment shall be levied against the entire Membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment for Common Expenses shall require the Affirmative Vote of a Majority of the Classes. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**1.6 Special Benefits Area Assessments.**

(a) **Amounts Included in Special Benefits Area Assessments.** Assessments in relation to Special Benefits Areas ("**Special Benefits Area Assessments**") shall be levied as follows. Each Special Benefits Area Budget (as defined below) shall include estimated expenditures for the following purposes: (i) to operate, manage, maintain, replace, rebuild and repair the Special Benefits Amenities and to defray the cost of services provided by an Association exclusively to Members whose Memberships are appurtenant to each Special Benefits Area, and (ii) to provide for reserves attributable to the Special Benefits Amenities. Such estimated expenditures shall include, but not be limited to, all charges, costs, and expenses whatsoever incurred by the Association for or in connection with the administration of the Special Benefits Area, including, but not limited to; (A) any taxes and assessments assessed against the Special Benefits Amenities for which the Association is responsible; (B) insurance premiums, including fire and other casualty insurance, liability insurance, workman's compensation insurance, and other insurance obtained for the Special Benefits Amenities; (C) payment of any liability of such Association for loss or damage arising out of or in connection with the Special Benefits Amenities or any fire, accident, or nuisance occurring within or in relation to the Special Benefits Amenities; (D) the cost of all utility services to the Special Benefits Amenities, including water, electricity, refuse removal, landscape maintenance services,

and any other service attributable thereto; (E) the unpaid share of any Special Benefits Area Assessments levied during the previous fiscal year against Members who have defaulted in payment thereof, to the extent that the same becomes uncollectible; and (F) cleaning, janitorial and landscape care fees, and other necessary expenses of upkeep, maintenance, management and operation incurred with respect to the Special Benefits Amenities.

(b) **Allocation of Special Benefits Area Assessments.** The Special Benefits Area Assessments shall be levied against the Owners of each of the Sites within the applicable Special Benefits Area based on the relative [Assessed Values of Sites] within the Special Benefits Area, relative frontage of each Benefitted Site, on the relative area of each Benefitted Site, or by any other method that the Board finds will result in assessments being equitably apportioned.

(c) **Procedure for Establishing Special Benefits Area Assessments.** At such time as the Board of the Association meets for the purpose of preparing the proposed budget of the Association for the next succeeding fiscal year, the Board will also establish a budget for the expenses of each Special Benefits Area ("**Special Benefits Area Budget**"), which Special Benefits Area Budget will be distributed to the Special Benefits Area Owners.

**1.7 General Provisions.** Any payment or Report required hereunder to be made to the Association shall be deemed to have been in a timely fashion if sent to the principal office of the Association by first class mail, postage prepaid and postmarked no later than the date such payment or Report is due, provided the Association thereby actually receives such payment or Report. The Association at its own expense shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any Member which are reasonably related to such Member's obligation hereunder to pay assessments or make Reports to the Association. The Board shall have the power to determine any matter and to resolve any dispute arising out of the application, determination, payment and collection of any Assessment or the making of any Report provided for in this Article, and may promulgate such additional Rules and Regulations which are consistent with the provisions hereof as the Board may deem necessary, useful or appropriate to the reasonable and efficient administration of such provision.

## **Article 2 Amendments**

**2.1 Amendments.** This **Exhibit E** may not be altered, amended or repealed except by the Affirmative Vote of a Majority of the Classes.

**Exhibit F**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**

**LENDER'S CERTIFICATE**

The undersigned, [NAME OF BANK], holder of the indebtedness secured by [MORTGAGE REFERENCE date and recording #], which mortgage (as amended, replaced, modified or restated, the "Mortgage") covers a portion of the real property covered by that certain Declaration of Master Covenants, Conditions and Restrictions for Moonlight Basin Community Madison County, Montana (the "Declaration"), recorded with the Clerk and Recorder of Madison County, Montana on \_\_\_\_\_, 2014 as \_\_\_\_\_, hereby subordinates its interest in the property subject to the Mortgage to the provisions of such Declaration of Master Covenants, Conditions and Restrictions, subject to the express terms of **Article 5** of the Declaration, including, but not limited to, the subordination provisions of **Section 5.7(b)** of the Declaration under which the Mortgage is to be deemed a "first mortgage."

[SIGNATURES]

[PERTINENT NOTARY BLOCK]

**Exhibit G**  
**of**  
**Declaration of Master Covenants, Conditions and Restrictions**  
**for**  
**Moonlight Basin Community**  
**ANNEXABLE AREA**

